

CLERK'S COPY.

Vol. I

164

TRANSCRIPT OF RECORD

P.Y.

469271

S.C.

Supreme Court of the United States

OCTOBER TERM, 1940 1941

No. ~~491~~ 10

CITY OF INDIANAPOLIS, ET AL., PETITIONERS,

vs.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
TRUSTEE, ETC., ET AL.

No. ~~492~~ 11

CITY OF INDIANAPOLIS, ET AL., PETITIONERS,

vs.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
TRUSTEE, ETC., ET AL.

No. ~~493~~ 12

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
TRUSTEE, ETC., PETITIONER,

vs.

CITIZENS GAS COMPANY OF INDIANAPOLIS, ET AL.

No. ~~494~~ 13

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
TRUSTEE, ETC., PETITIONER,

vs.

THE INDIANAPOLIS GAS COMPANY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 12, 1946.

CERTIORARI GRANTED OCTOBER 28, 1946.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.

THE CITY OF INDIANAPOLIS, ET AL.,
Petitioners,

vs.

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, TRUSTEE, ETC., ET AL.,
Respondents.

Two Causes—C. C. A. Nos. 7143-7144.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, TRUSTEE, ETC.,

Plaintiff-Appellant,

7143

vs.

CITIZENS GAS COMPANY OF INDIANAPOLIS,
ET AL.,

Defendants-Appellees.

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, TRUSTEE, ETC.,

Plaintiff-Appellee,

7144

vs.

THE INDIANAPOLIS GAS COMPANY,
Defendant-Appellant.

Appeals from the District Court of the United States for
the Southern District of Indiana, Indianapolis Division.

TRANSCRIPT OF RECO. FILED NOV. 22, 1939.
PRINTED RECORD.

IN THE

**United States Circuit Court of Appeals
For the Seventh Circuit**

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, TRUSTEE, ETC.,

Plaintiff-Appellant,

7143

vs.

CITIZENS GAS COMPANY OF INDIANAPOLIS,
ET AL.,

Defendants-Appellees.

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, TRUSTEE, ETC.

Plaintiff-Appellee,

7144

vs.

THE INDIANAPOLIS GAS COMPANY,

Defendant-Appellant.

Appeals from the District Court of the United States for
the Southern District of Indiana, Indianapolis Division.

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Pleas of the District Court of the United States for the Southern District of Indiana, at the United States Court House in the City of Indianapolis, in said District, before the Honorable Robert C. Baltzell, Judge of said District Court. Placita.

The Chase National Bank of the City of New York, Trustee, <i>vs.</i> Citizens Gas Company of Indianap- olis, <i>et al.</i>	}	No. 1844 in Equity.
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In accordance with Item No. 1 of the stipulation as to the parts of the record to be included in the record on appeal, the printed Transcript of Record in cause No. 6472 in this cause in the United States Circuit Court of Appeals for the Seventh Circuit is included in this transcript on appeal and is as follows:

TRANSCRIPT OF RECORD

IN THE
United States Circuit Court of Appeals
for the Seventh Circuit

No. 6472

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, TRUSTEE,

Plaintiff-Appellant,

vs.

CITIZENS GAS COMPANY OF INDIANAPOLIS, THE
CITY OF INDIANAPOLIS, A MUNICIPAL CORPORATION,
THE INDIANAPOLIS GAS COMPANY, ET AL.,

Defendant-Appellees.

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MR. WILLIAM H. THOMPSON,
MR. ALBERT L. RABB,
MR. LOUIS B. EWBANK,

Appeal from the District Court of the United States for the Southern District
of Indiana, Indianapolis Division.

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

No. 6472

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, TRUSTEE,

Plaintiff-Appellant,

vs.

CITIZENS GAS COMPANY OF INDIANAPOLIS, THE
CITY OF INDIANAPOLIS, A MUNICIPAL CORPORATION,
THE INDIANAPOLIS GAS COMPANY, ET AL.,

Defendant-Appellees.

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MR. WILLIAM G. SPARKS,
MR. WILLIAM H. THOMPSON,
MR. ALBERT L. RABB,
MR. LOUIS B. EWBANK,

Appeal from the District Court of the United States for the Southern District
of Indiana, Indianapolis Division.

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IN THE DISTRICT COURT OF THE UNITED STATES,
For the Southern District of Indiana,
Indianapolis Division.

The Chase National Bank of the
City of New York, Trustee,

Plaintiff,

vs.

Citizens Gas Company of Indianapolis, a corporation, The City of Indianapolis, a municipal corporation, The Indianapolis Gas Company, a corporation, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris, and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungelaus, Roy Sahn, David J. Angus, Isaac E. Woodward, and Russell J. Ryan, as members of the Board of Directors for Utilities of the City of Indianapolis,

Defendants.

In Equity
Cause No. 1844.

BILL OF COMPLAINT.

William L. Taylor,
State Life Building,
Indianapolis, Indiana,
Newton D. Baker,
Raymond T. Jackson,
Union Trust Building,
Cleveland, Ohio,
Solicitors for Plaintiff.

4 IN THE DISTRICT COURT OF THE UNITED STATES.
 * * (Caption—1844) * *

BILL OF COMPLAINT.

The plaintiff brings this its bill of complaint against the above named defendants and each of them and respectfully shows to this Court the following statements of the grounds upon which the jurisdiction of this Court depends, and of the ultimate facts upon which it asks relief, all of which said facts it is informed and believes and, therefore, duly alleges to be true:

1. Plaintiff, The Chase National Bank of the City of New York, is a corporation existing under and by virtue of the banking laws of the United States with its principal place of business in the City of New York in the State of New York, and is engaged in and authorized to engage in a general banking and trust business. It is a resident and citizen of the State of New York within the meaning of the Judicial Code of the Laws of the United States.

Defendants, The Indianapolis Gas Company and Citizens Gas Company of Indianapolis, are each corporations existing under the laws of the State of Indiana with their principal places of business in the City of Indianapolis, State of Indiana, and are each residents and citizens of said State of Indiana.

Defendant, the City of Indianapolis, is a municipal corporation existing by virtue of the laws of the State of Indiana, and is located in the Southern Federal Judicial District of Indiana.

Defendants, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as members of the Board of Trustees of Utilities for the City of Indianapolis, and Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungclaus, Roy Sahn, David J. Angus, Isaac E. Woodward, and Russell J. Ryan, as members of the Board of Directors for Utilities of the City of Indianapolis, and each of them, are residents of the City of Indianapolis, State of Indiana, and citizens and residents of the State of Indiana.

2. The grounds upon which the jurisdiction of this Court rests in this suit is the diversity of citizenship between the plaintiff herein and each and all of the defendants as herein above named. This cause is of a civil nature and the matter

in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand dollars (\$3,000.00).

3. Plaintiff brings this suit as Trustee under a deed of trust executed on the 1st day of October, 1902, by defendant, The Indianapolis Gas Company, to secure the payment of the principal and interest of certain first mortgage bonds of said The Indianapolis Gas Company, and for and in behalf of the holders and owners of said bonds and pursuant to the rights granted to the original trustees and their successor or
5 successors under said deed of trust, and at the specific instance and request of the holders and owners of \$415,000.00 in principal amount of said bonds. The plaintiff seeks a declaratory judgment to determine and fix the rights of the plaintiff as mortgagee and as trustee as aforesaid, and to determine the rights of the plaintiff and the obligations of the several defendants under or growing out of a certain lease indenture, hereinafter more particularly described, executed by and between the defendants, The Indianapolis Gas Company and Citizens Gas Company of Indianapolis on September 30, 1913, which said lease indenture, and the property leased thereunder, is part and parcel of the property of this trust of which this plaintiff is trustee, and plaintiff seeks further relief by way of injunction to preserve and protect the said property and the corpus of its trust, to prevent loss, waste, and damage to the same, and to prevent irreparable loss and damage to the holders of said bonds. Plaintiff further alleges that there exists a real and actual controversy as to the validity and as to the rights and obligations under said lease, all as more particularly hereinafter set out. Plaintiff has no plain, complete or adequate remedy at law, and adequate relief can only be administered in a court in equity.

4. On the 1st day of October, 1902, defendant, The Indianapolis Gas Company, duly bargained, sold and conveyed under said mortgage deed of trust all of its property, both real and personal, presently owned and thereafter to be acquired, to The Trust Company of America, a banking corporation then existing and doing business in the City of New York and one Ferdinand Winter, a citizen of the City of Indianapolis, Indiana, as trustees to secure the payment of principal and interest of an authorized first mortgage bond issue in the amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), said bonds being described and designated as The Indianapolis Gas Company first consolidated mortgage five percent gold bonds. The Trust Company of

America at the time of the execution of the mortgage deed of trust and at all times hereinafter mentioned, up to and including February 24, 1912, was duly authorized and empowered to hold in trust the property transferred and conveyed in trust to it and to execute the trusts thereby created and became and was until February 24, 1912 the duly acting and qualified corporate trustee under the mortgage deed of trust. On February 24, 1912, The Trust Company of America was duly merged pursuant to the laws of the State of New York with The Equitable Trust Company of New York. Said The Equitable Trust Company of New York was on February 24, 1912, and at all times hereinafter mentioned, up to and including May 31, 1930, duly authorized and empowered to hold in trust the property transferred and conveyed in trust to it and to execute the trusts created by said mortgage deed of trust and became and was until May 31, 1930, the duly acting and qualified corporate trustee under the mortgage deed of trust. On May 31, 1930, The Equitable Trust Company of New York was duly consolidated with the plaintiff. The plaintiff was on May 31, 1930, and at all times hereinafter mentioned, and still remains, duly authorized and empowered to hold in trust the property transferred and conveyed in trust to it and to execute the trusts created by said mortgage deed of trust and became and is now the duly acting and qualified corporate trustee under the mortgage deed of trust. Said Ferdinand Winter died in March, 1935, and plaintiff is now the sole acting and qualified trustee under said mortgage deed of trust, a copy of which is herein set out, made a part of this bill of complaint and marked Exhibit A.

Of the total authorized issue of said first mortgage bonds, bonds in the principal amount of Six Million Eight Hundred Eighty-One Thousand Dollars (\$6,881,000) have now been authenticated and delivered by the trustee and are in the possession and ownership of numerous and widely scattered individuals and corporations. All and each of the bonds of said authorized issue become due and payable on the 1st day of October, 1952.

5. Prior to the 30th day of September, 1913, defendants, The Indianapolis Gas Company and Citizens Gas Company of Indianapolis, were both and each separately engaged in the manufacture and distribution of gas to the inhabitants of Indianapolis. On said 30th day of September, 1913, the said The Indianapolis Gas Company executed and delivered to defendant, Citizens Gas Company of Indianapolis, an inden-

ture of lease covering the gas plants, systems, easements, franchises and rights theretofore operated and owned by it, all of which said property was covered by and included in the aforesaid mortgage deed of trust of which plaintiff
6 is the present trustee. A true copy of said indenture of lease is hereby made a part of this bill of complaint, is set out herein and marked Exhibit B.

Said lease is for a term of ninety-nine (99) years commencing October 1st, 1913, and provides that the lessee, its successors and assigns, during the term of said lease shall maintain and operate the leased property, making all necessary repairs, renewals, replacements, and extensions, so that the efficiency and value of said property shall not become impaired; provides that the lessee may require the lessor to obtain from the trustee of said mortgage deed of trust the authentication and delivery of additional bonds of said The Indianapolis Gas Company for the purpose of reimbursing the lessee for capital expenditures made on account of extensions and betterments to the plant and system of The Indianapolis Gas Company; provides that upon the maturity of the mortgage bonds theretofore or thereafter issued under said mortgage deed of trust, the lessee shall refund the same or provide for their extension or refunding by appropriate action in which the lessor shall join; and said lease further provides that the lessee during the term of said lease shall pay directly to the trustee of said mortgage deed of trust, now this plaintiff, as part of the rental thereunder, without relief from valuation or appraisement laws, and with attorneys' fees, the interest on all five percent fifty year gold bonds secured by said deed of trust, so long as the said bonds or any of them shall be outstanding, and also the interest as it shall from time to time fall due on any bonds which may be issued in refunding, renewing or extending the bonded indebtedness of the lessor under the provisions of said lease.

6. The said Citizens Gas Company of Indianapolis, lessee under the aforesaid 99-year lease, was organized in 1905 under the general laws of the State of Indiana, providing for the incorporation of manufacturing and mining companies. Although organized as a corporation for profit, it was and is actually a quasi-public corporation, its purposes and objects being fixed and controlled by a certain franchise and contract granted and entered into on the 25th day of August, 1905, by and between the City of Indianapolis and three individual citizens, viz., Alfred F. Potts, Frank D. Stalnaker and Lorenz

Schmidt. A true copy of said franchise and contract, together with the Articles of Incorporation of said company and all amendments thereto, is hereby made a part of this bill, set out herein and marked Exhibit C.

Said franchise and Articles provided, among other things, that all the capital stock of said company should be held by Trustees, one of whom should be named by the Mayor of Indianapolis, which said Board of Trustees should have full, complete and irrevocable power during the life of the corporation to hold the stock and vote the same as fully and completely as if they were the owners thereof and to name and select members of the Board of Directors; provided that owners of said stock should hold only a certificate for said share or shares, which said certificates were assignable and entitled the holders thereof to all dividends declared and paid by said company on said share or shares; provided that upon the expiration of 25 years and when said certificate holders had received an amount equal to the face value thereof with a certain specified interest, the said certificates should all be deemed fully paid and cancelled and the Trustees and Directors should then convey to said City of Indianapolis all the right, title and interest of said company in its said property and gas plant, subject to all legal obligations of the company, to be held and owned by said City for the use and benefit of its inhabitants; and said franchise and articles contained other appropriate provisions respecting the management of the company's property and means and methods for its transfer to the City of Indianapolis under certain specified conditions, all as more fully appears in said Exhibit C to which reference is hereby made.

Said Citizens Gas Company of Indianapolis has at all times continued to exist and operate under the provisions of said franchise and its Articles which embodied the terms of said franchise, and said Articles have only been amended to permit the increase of its capital stock and the issuance of first mortgage bonds.

As hereinabove set forth all rights, property and assets acquired by said Citizens Gas Company of Indianapolis were as a matter of law and equity acquired for the benefit of the inhabitants of the City of Indianapolis, subject to a charge in favor of the stockholders, creditors and other persons having valid claims and rights against said corporation or its property, and at all times from its creation of said company was the trustee of a public charitable trust for the

Bill of Complaint.

benefit of the inhabitants of the City of Indianapolis, said trust being subject to only such charges in favor of stockholders and creditors as above described.

7. On May 21, 1913, prior to the execution of the aforesaid lease, the parties thereto, to wit, said Citizens Gas Company of Indianapolis and The Indianapolis Gas Company, made joint petition to the Public Service Commission of Indiana for leave to execute the same and for approval thereof, all in conformity with the statutes of the State of Indiana which authorize a public utility to acquire by purchase or lease the property of a competing utility, and in conformity with the policy of said state as announced therein. Said joint petition showed:

That said companies, since the completion of the plant of the Citizens Gas Company, had been active and aggressive competitors with consequent duplication of lines, waste and inefficiency;

That the interests of the public generally required unified management of both properties to eliminate future duplications of facilities and to eliminate the expense and waste of dual operation; and

That the Citizens Gas Company of Indianapolis being a "co-operative institution" organized for the purpose of affording to the public the benefits of cheap gas with limited dividends to the stockholders, and providing for an ultimate transfer of the property on certain conditions to the City of Indianapolis for the benefit of the entire public, the proposed lease would promote the realization of the purposes of the organization of said company.

Upon the filing of said joint petition one Frank S. Fishback, a citizen of Indianapolis and a stockholder of the Citizens Gas Company of Indianapolis, filed with said Public Service Commission an intervening petition opposing the approval of the proposed lease from The Indianapolis Gas Company to the Citizens Gas Company of Indianapolis on the following grounds:

(a) That the rental provided therein was greatly excessive;

(b) That The Indianapolis Gas Company had no power to enter into the proposed lease under its charter and had no franchise to occupy the streets; and

(c) That the Citizens Gas Company of Indianapolis had no power to enter into the proposed lease for the following reasons, namely:

That the term of the proposed lease was for a period longer than the Lessee's corporate life;

That the City of Indianapolis was the true owner of the Lessee's property and that said Lessee Company had only the right to the use thereof until the charges for money invested therein and other obligations were paid and discharged; and

That the approval of three-fourths of the capital stock of the Lessee's Company was required under the law, which said requirement had not been complied with.

Said joint petition and said intervening petition of said Fishback came on for hearing before said Public Service Commission of Indiana, and said Commission having heard the evidence thereon did on October 1st, 1913, make a certain finding and order in which the value of the plant and property of The Indianapolis Gas Company was found to justify the proposed rental and in which the execution of said lease, the same being found to be in the public interest, was duly affirmed, ordered and approved. A true copy of said finding and order is hereto attached, made a part hereof and marked Exhibit E.

8. Following the approval by the Public Service Commission of Indiana as hereinabove recited, the said lease from The Indianapolis Gas Company to the Citizens Gas Company of Indianapolis was duly executed and delivered and thereafter, before the said lease became operative, the said Frank S. Fishback filed a petition for rehearing and contended:

That the performance of the terms of the lease would render impossible the fulfillment of the contract of the Citizens Gas Company of Indianapolis with the City of Indianapolis as the same related to the taking over of said property and plant of the said Citizens Gas Company by said City; and

That the City of Indianapolis had not given its consent to said lease.

8 On the 28th day of November, 1913, the Public Service Commission of Indiana overruled the aforesaid petition for a rehearing, and immediately thereafter the Citizens Gas Company took possession and control of the plant and system and all of the other property of The Indianapolis Gas Company described in said lease and covered by the mortgage deed of trust of which this plaintiff is the successor trustee.

In all of the proceedings before the Public Service Commission of Indiana, upon the joint petition of the Citizens Gas Company of Indianapolis and The Indianapolis Gas Company, upon the intervening petition of the said Frank S. Fish-

back, and upon the petition for a rehearing filed by the said Frank S. Fishback, the defendant, the City of Indianapolis, was duly served with notice to appear and through its duly appointed and authorized counsel did in fact appear and participate therein. No objection by petition to said Commission or otherwise was ever made by said City of Indianapolis either to the execution of said lease or to the orders made by said Commission, and said City has never, by any proceeding, act or suit, sought in any court to have set aside or vacated the determinations or orders of said Public Service Commission of Indiana, or to enjoin the enforcement thereof, or to prevent in any way such orders or determinations from being effective.

9. Following the proceedings and orders in and of said Public Service Commission of Indiana, said Frank S. Fishback did file an action in equity against the Public Service Commission of Indiana, the Citizens Gas Company of Indianapolis, The Indianapolis Gas Company and the City of Indianapolis in the Superior Court of Marion County, Indiana, asking that said 99-year lease executed with approval and upon order of said Public Service Commission of Indiana be declared null and void and that the defendants be restrained and enjoined from carrying out the provisions thereof upon the following grounds, among others, to wit:

(a) That the defendant, Public Service Commission of Indiana, was without power or authority to order or permit the parties to enter into said lease;

(b) That the Citizens Gas Company of Indianapolis was without power or authority under the law to enter into the lease for the reason that consent thereto had not been obtained from three-fourths of the capital stock of said company;

(c) That the City of Indianapolis had not given its consent to such lease, and it had not granted any right to the Citizens Gas Company of Indianapolis to operate the plant and system of The Indianapolis Gas Company as therein provided;

(d) That the payment of rentals as provided in said lease was of such an amount as would render the Citizens Gas Company of Indianapolis unable to pay thereafter the dividends and other payments to its stockholders as required in its Articles of Incorporation and by-laws;

(e) That the said lease constitutes a lien and encumbrance upon the property and earnings of the Citizens Gas Company

of Indianapolis, thereby impairing the obligation of the contract existing between said company and its stockholders and the City of Indianapolis.

(f) That the trustees, directors and officers of the Citizens Gas Company of Indianapolis were not by law or otherwise authorized to enter into said lease for a period of ninety-nine (99) years; and

(g) That said lease was void upon other grounds which had been raised and presented by said Fishback in his petition to the Public Service Commission of Indiana and his petition for rehearing there filed.

Before said cause came on to be heard the defendant, the City of Indianapolis, through the Board of Public Works thereof had formally accepted and recognized said lease by requiring extensions to be made in the lines and mains of The Indianapolis Gas Company, as provided in subsection 6 of section 27½ of said lease, which provision had been inserted in said lease at the instance of the City of Indianapolis, and these facts, together with the fact that the City of Indianapolis had appeared before the Public Service Commission and through its counsel participated in the proceedings before such Commission, were duly set forth in a joint answer filed by the several defendants in said suit. Thereupon plaintiff filed nine additional paragraphs of complaint amplifying the contentions originally made by him as hereinabove set forth.

9 To the answer of defendants the plaintiff filed a demurrer, and to each of the nine additional paragraphs of the complaint the defendants, respectively, filed demurrers. The demurrer to the answer was overruled and each of the demurrers to said additional paragraphs of the complaint was sustained, and each party declining to plead over, final judgment was rendered that plaintiff take nothing and that the defendants recover their costs. Thereupon the plaintiff undertook to perfect an appeal to the Supreme Court of Indiana, which appeal upon final hearing was dismissed by that Court on the ground that same had not been duly perfected as required by law; and the judgment of the Superior Court ever since has been and now is in full force and effect.

10. At the time of the execution and delivery of said 99-year Lease \$4,833,000 face amount of Indianapolis Gas Company First Mortgage Bonds had been issued and were outstanding. Subsequent thereto and subsequent to the proceedings hereinabove set forth upon the request of The Indianapolis Gas Company, additional bonds in the principal

amount of \$2,048,000 were authenticated and delivered by the Trustee, and were delivered in turn by The Indianapolis Gas Company to the Citizens Gas Company of Indianapolis pursuant to the provisions of said lease to reimburse said company for capital expenditures on account of extensions and betterments to the plant and system of the Indianapolis Gas Company, theretofore made by it as lessee, all or substantially all of which bonds were sold by the Citizens Gas Company of Indianapolis as provided by said lease. The aforesaid additional bonds were widely sold and distributed and were acquired and purchased in reliance that the same were secured by a valid and enforceable 99-year lease to a responsible corporation, that said corporation, its successors and assigns, was legally obligated to pay the interest thereon as a part of the rental under said lease, and that the validity of said lease had been judicially and finally determined by the Public Service Commission of Indiana and by the courts of Indiana.

11. From and after November 28, 1913, the plant and property of The Indianapolis Gas Company was operated by the Citizens Gas Company of Indianapolis under the aforesaid 99-year lease and was continuously so operated by said Company until possession thereof, in September, 1935, was delivered as hereinafter alleged to the defendant, the City of Indianapolis. During all of that period of time and for more than twenty-one years, the Citizens Gas Company of Indianapolis accepted and enjoyed the profits and use of the property as granted under said 99-year lease, it was relieved from the waste and expense of competition and duplication of facilities, and it operated and maintained the leased plant and property as a unified part of its own plant and system without regard to the preservation of the leased property as an independent, separable and competitive system. The City of Indianapolis and the residents and inhabitants thereof have had the full benefit and advantage of such operations, and of the profits produced thereby and of the protection thus given to the public charitable purposes to which the property of the Citizens Gas Company of Indianapolis were dedicated.

12. On March 20, 1929, the City of Indianapolis, through its Board of Public Works, adopted a resolution in which, after reciting the terms of the franchise and Articles of Incorporation of said Citizens Gas Company of Indianapolis, demand was made on said Company to mortgage its property, pay off the bonded indebtedness and certificate holders for both common and preferred stock and then to convey its

property to the said City, reserving to the City the right to furnish funds for such purpose.

13. Subsequent to the giving of said foregoing notice, one Newton Todd, a stockholder of the Citizens Gas Company of Indianapolis, filed a bill of complaint in this Court seeking to restrain and enjoin the transfer of its property by the said Citizens Gas Company to the City of Indianapolis upon the following grounds, among others, to wit:

(a) That the charter of the Citizens Gas Company and the contract with the City of Indianapolis, pursuant to which said Company was organized, did not create a public charitable trust;

(b) That the City of Indianapolis could not validly acquire the property of said Citizens Gas Company without a vote of its inhabitants and the consent of the Public Service Commission; and

(c) That the stockholders of the Citizens Gas Company were not estopped from asserting the invalidity of the
10 contract and agreement of August 25, 1905, between the City of Indianapolis and the incorporators of the Citizens Gas Company.

The City of Indianapolis was made a party defendant in the aforesaid cause and filed its separate Answer alleging, among other things:

(a) That a public charitable trust was created in favor of the citizens and gas consumers of Indianapolis through the execution of the contract and franchise between said City and incorporators of said Citizens Gas Company; and

(b) That the Act of the General Assembly of Indiana of March 11, 1929, which said Act affirmed and validated all of the provisions of said franchise and Articles of said Citizens Gas Company, did not violate any constitutional rights of the owners of stock of the said Citizens Gas Company.

The issues thus joined were heard by this Court and the relief prayed for was denied and on appeal of said cause to the United States Circuit Court of Appeals for the Seventh Circuit, said latter Court affirmed the decision of this Court and held and adjudged that the property of said Citizens Gas Company was a public charitable trust in favor of the inhabitants of the City of Indianapolis and that upon the extinguishment of the charge against said property in favor of the certificate holders to the extent of their investment said property might then be conveyed to the City of Indianapolis

as a continuance of the trust, the City being the successor to the said Citizens Gas Company as Trustee thereof.

14. In the meantime, after said action by Newton Todd had been commenced but before it was decided by the United States District Court, one Allen G. Williams had brought suit as a resident and taxpayer of the City of Indianapolis on behalf of himself and other resident taxpayers of said City in the Marion Superior Court of Indiana to establish a trust in all of the property devoted to the manufacture, sale or distribution of artificial gas in the City of Indianapolis, to recover the property from alleged delinquent and insolvent Trustees, and for the appointment of a receiver to administer said trust until such time as it should be turned over to its lawful beneficiaries. The defendants, the City of Indianapolis, the Citizens Gas Company of Indianapolis, The Indianapolis Gas Company, and your petitioner and Ferdinand Winter, Trustees under the mortgage deed of trust from The Indianapolis Gas Company, were made defendants in this cause of action and each of said defendants appeared therein and filed a demurrer to the Bill of Complaint, which demurrer was duly sustained, and final judgment was rendered in favor of the defendants. The plaintiff, on appeal to the Supreme Court of Indiana, made, among others, the following contentions:

(a) That the lease between the Citizens Gas Company and The Indianapolis Gas Company was invalid;

(b) That the action of the Public Service Commission of Indiana in approving said lease was an unlawful and invalid exercise of its power; and

(c) That the Act of the Indiana General Assembly creating and defining the powers granted to said Public Service Commission was an invalid denial of the plaintiff's constitutional rights.

The decision of the Supreme Court of Indiana, sustaining said decision and overruling all of the foregoing contentions of the Appellant, held that the lease executed between the Citizens Gas Company of Indianapolis and The Indianapolis Gas Company was valid and that both the parties thereto had the power to execute the same and that, by reason of the approval and the judgment upon said lease by the said Public Service Commission, there was no basis presented for any claim of invalidity.

15. Subsequent to the final decree in the foregoing suits and on or about June 1, 1935, the defendant, the City of Indi-

anapolis, for the purpose of obtaining funds with which to acquire the property and assets of the said Citizens Gas Company of Indianapolis, in accordance with the right reserved in the resolution adopted on March 20, 1929, as hereinbefore alleged, offered for sale and sold \$8,000,000 face amount of City of Indianapolis Gas Plant Revenue 4½% Bonds and in the public offering thereof represented among other things:

(a) That said bonds were issued to provide funds to permit the said city to exercise its franchise rights to acquire property owned by Citizens Gas Company of Indianapolis;

(b) That upon the consummation of this acquisition the said City will control a business supplying the entire 11 domestic and commercial gas requirements of the City of Indianapolis and its suburbs;

(c) That said Citizens Gas Company held a lease for 99 years covering the properties and business of The Indianapolis Gas Company, thereby giving to it the control of the entire gas business of the City of Indianapolis and its environs;

(d) That the property covered by said lease from The Indianapolis Gas Company had a depreciated physical value of \$9,181,960 and a reproduction value of \$12,730,490, as against which the capital value of said company's outstanding first consolidated mortgage 5% gold bonds was \$6,881,000 and the capital value of its outstanding stock was \$2,000,000; and

(e) That upon the acquisition of the property operated by the Citizens Gas Company the City of Indianapolis would cause the same to be continuously operated as a gas system in an efficient manner and at reasonable cost, and would use all reasonable efforts to resist competition and maintain the exclusive right to serve gas in the City of Indianapolis and in Marion County and the towns therein.

16. Following the sale of the aforesaid bonds, and prior to September 9, 1935, the City of Indianapolis paid, or provided for payment, direct to the holders of the common stock of the Citizens Gas Company of Indianapolis the sum of \$3,125,000 in full satisfaction of their interest in the property and assets of said Company; paid, or provided for payment, direct to the holders of preferred stock of the Citizens Gas Company of Indianapolis the sum of \$1,050,000 in full satisfaction of their interest in the property and assets of said Company; and paid, or provided for payment, direct to the holders of outstanding bonds of the Citizens Gas Company the sum of \$2,858,500 representing the full face amount of such outstand-

ing bonds, all of which was done with full knowledge of the obligations of the Citizens Gas Company of Indianapolis under the aforesaid 99-year lease, with full knowledge that after the retirement of all of its capital stock said company would be without means for meeting or paying its said obligations and without notice to the plaintiff herein or to the holders of bonds of The Indianapolis Gas Company for whom plaintiff is Trustee.

17. On or about September 9, 1935, the Citizens Gas Company of Indianapolis transferred all of its property to the defendant the City of Indianapolis as successor trustee and executed and delivered to said City an instrument of transfer and assignment, a copy of which is hereto attached, marked Exhibit E and made a part hereof, setting forth that the City of Indianapolis had taken all of the necessary steps in the exercise of its right to acquire, take over and administer as a public charitable trust all of the property of the Citizens Gas Company of Indianapolis; that the said assignment was made subject to all legal obligations of the Citizens Gas Company of Indianapolis, including the legal obligations of said company under a certain lease dated September 30, 1913, from The Indianapolis Gas Company; and that the Citizens Gas Company of Indianapolis would make and execute any and all further instruments necessary to carry out and execute the public charitable trust as aforesaid, including proper conveyances covering said company's real property and leasehold interests. On the same date, namely September 9, 1935, the Citizens Gas Company of Indianapolis executed and delivered to the defendant, the City of Indianapolis, an assignment of lease covering the aforesaid 99-year lease dated September 30, 1913, from The Indianapolis Gas Company to the Citizens Gas Company, a copy of which assignment is hereto attached, marked Exhibit F and made a part hereof.

18. Upon the receipt of the foregoing instruments of assignment, the defendant, the City of Indianapolis, through its department of utilities, accepted the assignment and transfer under the terms and conditions set forth in Exhibit E, but adopted a resolution purporting to reject the assignment of the lease from The Indianapolis Gas Company to the Citizens Gas Company of Indianapolis, and caused public notice of such purported rejection to be recorded in the office of the Recorder of Marion County, Indiana, a copy of which resolution and notice is made a part hereof, set out herein and marked Exhibit G. At the same time the defendant, the City

of Indianapolis, adopted a resolution, which plaintiff is informed and therefore alleges, recited that in order to prevent an interruption of service to the consumers in the territory theretofore served by the Citizens Gas Company of Indianapolis, the City would use and operate the plant and system

of The Indianapolis Gas Company for a temporary period without prejudice to its alleged right to reject the said 99-year lease and repudiate the lessee obligations thereunder. The City thereupon did take possession of all and singular the properties of said Citizens Gas Company of Indianapolis and all of the properties of said The Indianapolis Gas Company covered by the terms of said lease and continued the operation of all said gas system and is now so operating the same. Plaintiff is further informed and therefore alleges, that following the aforesaid resolution, the City of Indianapolis sought to enter into negotiations with The Indianapolis Gas Company for a revision or cancellation of said lease, and that for at least a part of the period subsequent to said resolution the possession and operation by the City of Indianapolis was consented to by defendant, The Indianapolis Gas Company, but without any waiver by said company of any of its rights, which condition was expressly stipulated to by the parties. All of the aforesaid acts by the City of Indianapolis and by The Indianapolis Gas Company, however, were done without notice to the plaintiff herein and without the knowledge or consent of the plaintiff or of the holders of bonds for whom plaintiff is Trustee.

19. Upon the execution and delivery of the 99-year lease to the Citizens Gas Company of Indianapolis as authorized and approved by the Public Service Commission of Indiana, the same became, in accordance with the provisions thereof, subject to the mortgage deed of trust of which this plaintiff is the successor trustee; and further, in accordance with the provisions of said mortgage deed of trust, became a part of the trust estate thereunder and subject to all of the terms and provisions thereof, as fully and completely as though said lease had been executed and delivered prior to the execution and delivery of the aforesaid mortgage deed of trust; and the provisions of said 99-year lease, requiring the lessee to pay interest as the same should fall due upon the then outstanding bonds and upon the bonds which might thereafter be issued under said original mortgage deed of trust, were made for the benefit of the mortgage trustee and the bondholder beneficiaries of the mortgage estate, and upon the execution and

delivery of said 99-year lease the mortgage trustee, its successors and assigns became vested with a distinct and independent right to require the lessee, its successors and assigns, to recognize and perform all of the lessee's obligations and engagements thereunder in so far as the same should directly affect the property rights of the holders of bonds issued under said original mortgage deed of trust, of which the plaintiff is successor trustee.

20. By virtue of the findings and orders of the Public Service Commission of Indiana, the final decree and judgment in the case of *Fishback v. Public Service Commission of Indiana, et al.*, the final decree and judgment in the case of *Todd v. Citizens Gas Company of Indianapolis, et al.* and the final decree and judgment in the case of *Williams v. Citizens Gas Company of Indianapolis, et al.*, all as hereinbefore set forth, the defendants are each and severally estopped to deny that the aforesaid 99-year lease, from the date of its execution, was and still is a valid obligations of the Citizens Gas Company of Indianapolis, its successors in trust and assigns.

21. By reason of the operations of the Citizens Gas Company of Indianapolis, the acceptance by it and by the City of Indianapolis for more than 21 years of all of the benefits under said 99-year lease including the benefits of consolidated operation of the leased property, and by reason of the acts of the defendants in causing the Trustee under the aforesaid mortgage deed of trust to authenticate and deliver additional bonds to reimburse the Citizens Gas Company of Indianapolis for capital expenditures on account of extensions and betterments to the plant and system of The Indianapolis Gas Company theretofore made by it as lessee, and by reason of the other acts of the several defendants in causing said bonds to be sold and distributed as bonds secured by a valid 99-year lease to the Citizens Gas Company of Indianapolis, its successors in trust and assigns, all as hereinbefore more fully set forth, the defendants are each and severally estopped to deny that the aforesaid 99-year lease, from the date of its execution was and still is a valid obligation of the Citizens Gas Company of Indianapolis, its successors in trust and assigns.

22. By reason of the acts of the City of Indianapolis in exercising its franchise rights to acquire all of the property and assets of the Citizens Gas Company of Indianapolis, by the resolution adopted March 20, 1929, by the sale of revenue

bonds in the amount of \$8,000,000, by representations made in connection with the sale of said bonds, by acceptance of the assignment hereinbefore referred to which is marked Exhibit E and made a part hereof, and by the retirement by the said City of all the common and preferred stock of the Citizens Gas Company of Indianapolis by direct payment for said stock to the holders thereof without notice to the plaintiff herein or its bondholders and with full knowledge of the obligations of the Citizens Gas Company under said 99-year lease and with full knowledge that said Company would thereby become unable itself to meet or pay the rentals thereafter accruing under said lease, all as hereinbefore more fully alleged, the said defendant is estopped to deny, and in equity and good conscience may not deny, that it is directly and primarily liable for all of the debts and obligations of the Citizens Gas Company of Indianapolis including the obligations under the aforesaid 99-year lease and the obligation to pay to the plaintiff herein direct the interest due and to become due upon all bonds now issued and outstanding and which may hereafter be issued under the said mortgage deed of trust of The Indianapolis Gas Company.

23. The City of Indianapolis, through its department of utilities, at the time it refused to accept the assignment of said lease, all as aforesaid, nevertheless denied and does now deny its obligation as successor to and assignee of said Citizens Gas Company of Indianapolis of any and all liability for the obligations of the lessee under the terms and provisions of said lease. Plaintiff is informed and therefore alleges, that on September 30, 1935, said City of Indianapolis, through its board of directors for utilities, did advise by letter to the said The Indianapolis Gas Company that it was ready to undertake the negotiation of a new lease and that pursuant to said letter certain negotiations have been in progress between defendant, the City of Indianapolis, and The Indianapolis Gas Company, which this plaintiff believes and alleges look toward a cancellation of said lease and the destruction and waste of the valuable security and rights belonging to this trust and all to the damage thereof.

24. Plaintiff is informed and believes and therefore alleges that on or about March 2, 1936, the City of Indianapolis and The Indianapolis Gas Company entered into a further written contract whereby said defendants have undertaken to agree that the City shall continue to operate said gas properties without being bound or agreeing to be bound by any of the

covenants of said 99-year lease, that during the continuation of said agreement the City of Indianapolis shall not be required to pay to plaintiff the interest upon The Indianapolis Gas Company bonds as required under said 99-year lease, that in lieu of paying rent for the use of said gas properties the City shall pay to the Indiana National Bank of Indianapolis, Indiana, a sum equal to the rental stipulated under said 99-year lease, and that the funds so deposited by the City shall be held until such time as the City and The Indianapolis Gas Company may agree upon their disposition or until the obligations of the City shall be finally determined in a suit between the parties the character of which is not set forth. By said agreement of March 2, 1936, the plaintiff and the bondholders for whom plaintiff is Trustee are deprived of valuable property rights, and are threatened with default in the payment of interest hereafter payable under said mortgage deed of trust and under said 99-year lease; and the mortgaged property and its good will and going concern value are threatened as a result of the continued denial by the City of Indianapolis of its obligations under the aforesaid 99-year lease, all of which has impaired and injured and threatens to further impair and injure the value of the outstanding bonds of The Indianapolis Gas Company, of which the plaintiff is Trustee.

25. This plaintiff is informed and therefore alleges, that defendants, The Indianapolis Gas Company and the City of Indianapolis, through its directors for utilities, are now negotiating toward an agreement for the use of said property of said The Indianapolis Gas Company covered by said mortgage deed of trust and said indenture of lease under terms and conditions which deprive this plaintiff and the holders of said first mortgage bonds of their rights, all as set out and provided in said mortgage deed of trust and in said indenture of lease, all to the irreparable damage and injury to the trust and the owners of said first mortgage bonds of The Indianapolis Gas Company, for whom this plaintiff brings this action.

Wherefore Plaintiff Prays:

1. That process issue against the defendants requiring them and each of them to answer this bill, but not under oath or affirmation, the benefit whereof being hereby expressly waived by the plaintiff.

14 2. That this Court by judgment and decree declare said lease to be a valid and binding obligation in all its

terms and conditions upon the defendants, The Indianapolis Gas Company, the Citizens Gas Company of Indianapolis, the City of Indianapolis and the trustees and directors for utilities of said City and upon all the property formerly owned by said the Citizens Gas Company of Indianapolis, which is now owned and operated by the City of Indianapolis, through its board of directors for utilities.

3. That this Court by judgment declare that said lease is in equity and law the property of plaintiff, as trustee under the mortgage deed of trust, and is part of the security for the full and faithful performance of the obligations thereunder of the said The Indianapolis Gas Company.

4. That pending a hearing and final judgment in this cause, said defendant, The Indianapolis Gas Company, be by order of this Court restrained and enjoined from making or entering into any contract or agreement or performing any contract which may already have been entered into or doing any act or thing to impair, rescind or modify the aforesaid lease to the Citizens Gas Company of Indianapolis or to alter the obligations of the lessee thereunder.

5. That pending a hearing and final judgment in this cause, said defendant, the City of Indianapolis, being in possession of the leased property, be directed and enjoined by mandatory order of this Court to maintain and preserve the leased property as provided and required under the terms of said lease.

6. That pending a hearing and final judgment in this cause, said defendant, the City of Indianapolis, be ordered to pay direct to this plaintiff all of said interest payments as they become due and payable in accordance with the provisions of said lease, or in the alternative to pay the aforesaid sums to the Clerk of this Court to be held and disbursed by him subject to the further orders of this Court.

7. That this Court in its final decree enter judgment against the defendants who shall be found liable therefor in the amount of all unpaid interest payable under said lease to the plaintiff herein, together with interest thereon from the several dates upon which such interest payments accrued at the rate of six per centum per annum, and that the defendant, the City of Indianapolis, be ordered to observe and perform all of the lessee obligations in said lease set forth and to promptly and regularly pay direct to this plaintiff all of the interest payments as they shall thereafter become due and payable in accordance with the provisions of said lease.

8. That the reasonable expenses of the plaintiff in and

Bill of Complaint.

about the bringing and prosecution of this suit, including reasonable attorneys' fees for plaintiff's solicitors, be determined and that judgment for the same be entered against defendants, and each of them.

9. That all and such other and full relief as may be proper and equitable in the premises be given.

Wm. L. Taylor,
State Life Building,
Indianapolis, Indiana,
Newton D. Baker,
Raymond T. Jackson,
Union Trust Building,
Cleveland, Ohio,
Solicitors for Plaintiff.

State of New York }
County of New York } ss.:

G. A. Kinney, being duly sworn, deposes and says: That he is a Vice President of The Chase National Bank of the City of New York, the plaintiff named in the above-entitled action; that he has read the foregoing bill of complaint and knows the contents thereof, and that the allegations therein contained are true as he verily believes.

G. A. Kinney.

Subscribed and sworn to before me this 6th day of June, 1936.

(Seal)

C. E. Van Name,
Notary Public.

C. E. Van Name
Notary Public, Richmond County
Certificates Filed in
New York County Clerk's No. 15
Register's No. 7-V-8 •
Queens County Clerk's No. 1172
Register's No. 4768
Commission Expires March 30, 1937

15 EXHIBITS.

16 EXHIBIT A.

Deed of Trust of The Indianapolis Gas Company, to The Trust Company of America and Ferdinand Winter, Trustees.

17 This Indenture, made and entered into this first day of October, A. D. 1902, between The Indianapolis Gas Company, a corporation organized and existing under the laws of the State of Indiana, party of the first part, hereinafter referred to as the Gas Company, and The Trust Company of America, a corporation organized and existing under the laws of the State of New York and Ferdinand Winter of Indianapolis, Marion County, in the State of Indiana, hereinafter referred to as the Trustees, party of the second part, Witnesseth:

Whereas, the Gas Company is authorized to borrow money for its corporate purposes, and is duly authorized to mortgage any of its property or franchises to secure the payment of money so borrowed; and

Whereas, the Gas Company has outstanding obligations, some of which are in the form of bonds secured by mortgage upon its property and franchises, and others of which are in the form of promissory notes, or are otherwise evidenced; and

Whereas, the Gas Company, deeming the same necessary and expedient, has duly resolved to exercise the borrowing power conferred upon it by the laws of the State of Indiana, and to issue from time to time its corporate bonds for the purpose of funding the aforesaid obligations into one general debt payable at a later period, and for the purpose of paying for the property already acquired by it and for other property that may hereafter from time to time be acquired by it, and for adding to, improving, enlarging, extending, developing or equipping its artificial gas system and plants and other corporate property and for constructing, carrying on or extending its system, plants and works; and for said purposes the Gas Company has, by resolution of its Board of Directors, duly approved, ratified and confirmed at meetings of said

Board of Directors duly convened and held, authorized and directed its President and Secretary to execute in its corporate name its corporate bonds, to be designated First Consolidated Mortgage Five Per Cent. Gold Bonds, in the aggregate amount of seven and one-half million dollars, to be issued and used for the purpose of refunding and consolidating the bonded and other outstanding obligations of, and for paying for, property already acquired by the Gas Company, and for paying for other property which may from time to time be acquired by the Gas Company, and for adding to, improving, enlarging, extending, developing or equipping the artificial gas system and plants and other property of the Gas Company, and for constructing, carrying on or extending its works; and for the purpose of securing the payment of all of said bonds together with the interest thereon, has authorized and directed its President and Secretary to execute in its corporate name and on its behalf and under its corporate seal, and to deliver to said Trustees a mortgage in the form hereby made, bearing date the first day of October, A. D. 1902, conveying by way of mortgage to the said The Trust Company of America and Ferdinand Winter as Trustees, and to their successors in said trust, all the property, rights, franchises, easements, privileges and immunities of the Gas Company, of whatever and every name and nature, real, personal and mixed, in possession or expectancy, now owned or possessed by the Gas Company, together with all the tolls, incomes and revenues and rents, issues and profits thereof; and

Whereas, each of said bonds is to be in the words and figures following, subject only to the necessary variation as to the numbers and dates thereof, each of said bonds being for the sum of one thousand dollars, and numbered consecutively from one (1) upwards, to wit:

No. _____

\$1,000.

UNITED STATES OF AMERICA

STATE OF INDIANA

The Indianapolis Gas Company
(Of Indianapolis).

First Consolidated Mortgage Five Per Cent. Gold Bonds.

The Indianapolis Gas Company, for value received, hereby acknowledges itself indebted unto the bearer hereof in the sum of One Thousand Dollars, which sum it promises to pay to the holder of this bond on the first day of October, in the year one thousand, nine hundred and fifty-two, in Gold Coin of the United States of America, of the present standard 18 of weight and fineness, at the office of The Trust Company of America in the State of New York, with interest thereon from the first day of October in the year one thousand, nine hundred and two at the rate of five per cent. per annum, payable in like gold coin at the aforesaid office of said Trust Company semi-annually; that is to say, on the first day of April, and of October, in each year after the date hereof, upon the presentation and surrender of the annexed coupons respectively.

In case of default in the payment of any half-yearly instalment of interest which shall become payable and which shall have been demanded by presentation at the office of said The Trust Company of America, and a continuance of such default for a period of six months after such demand, the principal of this bond shall become due, in the manner and with the effect and subject to the conditions provided in the Indenture of Mortgage securing the payment of the same hereinafter mentioned.

There shall be no recourse to the stockholders and officers of said The Indianapolis Gas Company for the payment of this bond under any law now in force or which may hereafter be enacted and any such recourse is hereby expressly waived.

This bond is one of a series of bonds of like amount, tenor and effect, and numbered consecutively from and including number one (1) upwards, issued and to be issued by The Indianapolis Gas Company, under and in accordance with the terms and conditions of a certain indenture of mortgage,

dated October 1st, A. D. 1902, made and executed under authority of the Board of Directors of the said The Indianapolis Gas Company to the said The Trust Company of America and Ferdinand Winter as Trustees, by the terms of which the issue of said bonds is limited to seven and one-half million dollars, of which four million dollars in amount are now issued. The remainder of the bonds secured by said mortgage may be issued from time to time as required by said The Indianapolis Gas Company for the acquisition of additional property, real or personal, and for improvements, extensions, enlargements, equipment or betterments, and for constructing, carrying on or extending its artificial gas system and plants and works at a rate not exceeding ninety per cent. of the cost thereof. None of said bonds can be issued in excess of said four million dollars in amount, except upon proof to The Trust Company of America, Trustee, required in and by said indenture of mortgage. Of said bonds now issued, there have been deposited with said The Trust Company of America, Trustee, bonds to the amount of three million two hundred thousand dollars which, or the proceeds thereof, so far as may be necessary, are to be held in reserve by said The Trust Company of America, Trustee, for the purpose of redeeming and retiring all former issues of bonds of this Company now outstanding. Any of said bonds not needed for that purpose and the remainder of the bonds now issued, or the proceeds thereof, are to be used to fund or pay the outstanding indebtedness, other than bonded, of the company and to pay for property heretofore purchased or contracted to be purchased.

The payment of each and of all the bonds of this series so issued or to be issued by the said The Indianapolis Gas Company, is equally secured without preference, priority or distinction as to the lien, or otherwise, of one bond over another, and without reference to the time of the actual issue of said bonds or any part thereof, by a certain indenture of mortgage, bearing date the 1st day of October A. D. 1902, executed and delivered by the said The Indianapolis Gas Company to The Trust Company of America and Ferdinand Winter, as Trustees, of all the property, rights and franchises, tolls, incomes and revenues of the said The Indianapolis Gas Company owned or possessed by it at the date of said mortgage, or which may at any time thereafter be acquired by said The Indianapolis Gas Company, and more particularly described and set forth in said indenture of mortgage.

This bond shall pass by delivery or by transfer upon the books of the Central Trust Company of New York, the Transfer Agent of this Company, at its office in New York City. After a registration of ownership, certified hereon by the Transfer Agent of the Company, no transfer shall be valid except upon the books of the Transfer Agency, unless the last transfer be to bearer, which shall restore transferability by delivery. But this bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of each holder.

This bond shall not become obligatory until authenticated by the certificate of the aforesaid Trustee, The Trust Company of America.

19 In Witness Whereof, The said The Indianapolis Gas Company has caused its corporate seal to be hereunto affixed, and these presents to be executed by its President and Secretary, this first day of October, in the year one thousand nine hundred and two.

President.

Secretary.

Coupon.

\$25.00

The Indianapolis Gas Company will pay to the bearer, at the office of The Trust Company of America in the City of New York, Twenty-five dollars in gold coin of the United States of America, on the first day of _____, being six months' interest on its First Consolidated Mortgage Five Per Cent. Gold Bond No. _____.

Treasurer.

Trustee's Certificate.

It is hereby certified that the within is one of the bonds described in the mortgage within mentioned, and the holder hereof is entitled to the benefit of the trust therein created.

The Trust Company of America,

Trustee.

By

Vice-President.

Now, Therefore, it is covenanted that no bonds shall be issued hereunder except such as shall be certified, as herein provided, by the said The Trust Company of America, Trustee, one of the parties of the second part hereto, or its successor in this trust, and under the following conditions:

First: The said The Trust Company of America as Trustee, hereunder, shall upon the execution and delivery and recording of this mortgage, certify an issue of said bonds to the amount of four million dollars for the purpose aforesaid, and deliver to the Gas Company eight hundred thousand dollars thereof; and the said The Trust Company of America shall retain bonds to the amount of three million two hundred thousand dollars to be held in reserve by said The Trust Company of America for the purpose of redeeming and retiring all former issues of bonds of the Gas Company now outstanding. Said three million two hundred thousand dollars in amount, of bonds so held in reserve by the said The Trust Company of America may be delivered to the Gas Company, or on its order, upon proof being given to the reasonable satisfaction of the said The Trust Company of America that said former issues of bonds have been duly redeemed or retired by the Gas Company.

Second: The remainder of said bonds, being three and one-half million dollars in amount, shall from time to time be authenticated and delivered by said Trust Company, Trustee, or the then existing trustee hereunder, successor to said Trust Company in the trusts hereof to the Gas Company, as hereinafter stated, after detaching and cancelling all matured coupons, for ninety per cent. of the amount that may from time to time be actually expended or for which liability may have been actually incurred by the Gas Company in acquiring additional property, real or personal, or for improvements, extensions, enlargements, equipment, or betterments, or for constructing, carrying on or extending its artificial gas systems and plants and works.

The said Trust Company, Trustee, or the then existing Trustee hereunder, successor to said Trust Company, shall from time to time authenticate and deliver to the Gas Company the said remainder of said bonds, in such amounts as may be required for the purposes mentioned above under the title "Second," upon demand therefor in writing signed by the President of the Indianapolis Gas Company, stating the amount required and accompanied by his affidavit stating the purpose of the expenditure or liability and the cost thereof;

and in the case of a demand for bonds for the purchase of real estate, there shall also be exhibited to such trustee a deed conveying the same to the Gas Company, together with an abstract of title certified to by the attorney of the Gas Company as showing a good merchantable title in fee in the grantor named in said deed.

The amount of such First Consolidated Mortgage Five Per Cent. Gold Bonds that may be issued hereunder, is limited to seven and one-half million dollars, and no such bonds in excess of that amount shall be authenticated by such trustee or shall be valid.

It is the intention hereof and it is so hereby declared that all of the bonds, together with the interest thereon, to be issued as hereinbefore provided, shall be equally in all respects secured by these presents upon all the property hereinafter described and mentioned, without preference, priority or discrimination on account of and without reference to the time of the actual issue of said bonds or any thereof.

And in consideration of the premises and in consideration of the sum of one dollar to the Gas Company, in hand paid by the Trustees, the party of the second part hereto, the receipt whereof is hereby acknowledged, the said The Indianapolis Gas Company hath granted, bargained, sold, assigned, conveyed and transferred, and by these presents does hereby grant, bargain, sell, assign, convey, transfer and warrant unto the said Trustees, and to their successors in this trust, all and singular, the following described property, situate in the counties of Marion, Hamilton, Tipton, Grant and Madison, in the State of Indiana, to wit:

Lots one (1), two (2), three (3), and four (4), in square one (1), in S. A. Fletcher, Jr's., Northeast Addition to the City of Indianapolis, in said County of Marion.

Also, lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), and twenty-one (21), in Washington Hall Company's subdivision of square ninety-eight (98), in the City of Indianapolis, subject to the right of way of the Union Railway Company over and across said lots five (5), six (6), seven (7) and eight (8).

Also, lots one (1), two (2), three (3), four (4), seven (7), nine (9), ten (10), eleven (11), twelve (12) and thirteen (13),

in James M. Ray's subdivision of the east half of square ninety-eight (98), in said City of Indianapolis.

Also, those parts and parcels of the east half of square ninety-eight (98), in said City of Indianapolis, described as follows, to wit: Beginning at a point on the west line of Delaware street two hundred and eighty-two (282) feet north of the northwest corner of Delaware and South streets as originally platted, thence north on the west line of Delaware street two hundred (200) feet, thence west one hundred and eighty-five (185) feet, thence south two hundred (200) feet, thence east one hundred and eighty-five (185) feet to the place of beginning; also, beginning at a point on the west line of Delaware street four hundred and eighty-two (482) feet north of the northwest corner of Delaware and South streets as originally platted, thence north on the west line of Delaware street, one hundred and twenty-four (124) feet and nine (9) inches, thence west one hundred and eighty-six (186) feet and six (6) inches, thence south one hundred and twenty-four (124) feet and nine (9) inches, thence east to the place of beginning, subject, however, to the right of way of the Union Railway Company over and across the same; also, beginning on the east line of said square, and west line of Delaware street, at a point five hundred and ninety-six (596) feet and nine (9) inches north of the southeast corner of lot nine (9) in James M. Ray's subdivision of the east half of said square ninety-eight (98), thence running west parallel with South street one hundred and sixty-nine (169) and six-tenths (6-10) feet to a point two (2) feet at right angles to the south rail of the Union Railway track, thence northeastwardly parallel with and two (2) feet south of the south rail of said track, one hundred and eighty and seven-tenths (180.7) feet to the east line of said square ninety-eight (98), thence south sixty-two and twenty-five hundredths (62.25) feet to the place of beginning, subject to the right of way of the Union Railway Company, containing three thousand five hundred and sixty and eight-tenths (3560.8) square feet, more or less, exclusive of such right of way.

Also, lots one (1), two (2) and three (3), in the Indianapolis Insurance Company's subdivision of lots one (1) and two (2) in square sixty-four (64) in said City of Indianapolis, as appears of record May 3, 1869 (see plat book three [3] page 21 101). Also, that part of lot three (3) in square sixty-four (64) in said City of Indianapolis, described as fol-

lows, to wit: Beginning on the southwest corner of said lot three (3), thence east on the north line of Maryland street thirty-nine (39) feet, thence north eighty-six (86) feet, to a point, thence west thirty-nine (39) feet, to the west line of said lot three (3), thence south on said west line eighty-six (86) feet to the place of beginning.

Also, part of out-lots one hundred and sixty-six (166), one hundred and sixty-seven (167), and one hundred and sixty-eight (168), in said city of Indianapolis, described as follows: Commencing at a point on the north line of Pratt street, at the intersection of the west line of that part of said out-lot one hundred and sixty-eight (168), owned by the LaFayette & Indianapolis Railroad Company (now the Cleveland, Cincinnati, Chicago & St. Louis Railway Company), thence north along the west line of said part of said out-lot owned by said railway company one hundred and fifty (150) feet, thence west and parallel with said Pratt street to the center of the Central Canal, thence southeast along the center of said canal to the north line of said Pratt street, at its intersection with said canal, thence east along the north line of said Pratt street to the place of beginning, saving and excepting the easement for canal purposes over and upon the same, of the Central Canal.

Also, part of said out-lots one hundred and sixty-seven (167) and one hundred and sixty-eight (168) in said city of Indianapolis, described as follows: Commencing at a point in the west line of the land owned and occupied by the Cincinnati, Indianapolis, St. Louis & Chicago Railway Company (now the Cleveland, Cincinnati, Chicago & St. Louis Railway Company), in said out-lot one hundred and sixty-eight (168), one hundred and fifty (150) feet north of the north line of Pratt street, thence running north fifty (50) feet to a point, thence west parallel with said Pratt street, to the Indiana Central Canal, thence in a southeasterly direction, with the line of said canal, to a point west of the place of beginning and one hundred and fifty (150) feet north of said Pratt street, thence east parallel with said Pratt street to the place of beginning.

Also, lot forty-five (45) in Lazarus & Pierce's Meridian Place addition to said city of Indianapolis.

Also, lots numbered sixty-seven (67) and sixty-eight (68) in Long and Harlan's Cottage Home Addition to said city of Indianapolis.

Also, two hundred and thirteen (213) in Bradley, Denny and Atkinson's east Washington Addition to said city of Indianapolis.

Also, part of the southeast quarter of section twenty-four (24) township sixteen (16) North of range three (3) east, beginning at a point ten hundred and ninety-five (1095) feet, south of the north line of said quarter section, and thirty (30) feet east of the west line of said quarter section, running east parallel with the north line of said quarter section, one hundred and thirty-one (131) feet, thence south parallel with the west line of said quarter section one hundred (100) feet, thence west parallel with the north line of said quarter section one hundred and thirty-one (131) feet, thence north parallel with the west line of said quarter section, one hundred (100) feet to the place of beginning. Also another part of the same quarter section, beginning at a point, eleven hundred and ninety-five (1195) feet, south of the north line of said quarter section, and one hundred and seventy-six (176) feet east of the west line of said quarter section running east parallel with the north line of said quarter section one hundred and thirty-one (131) feet, thence south, parallel with the west line of said quarter section, one hundred (100) feet, thence west parallel with the north line of said quarter section, one hundred and thirty-one (131) feet, thence north parallel with the west line of said quarter section, one hundred (100) feet to the place of beginning.

Also, part of the southeast quarter of section twenty-four (24), township sixteen (16) north of range three (3) east, beginning at a point ten hundred and ninety-five (1095) feet south of the north line of said quarter section and one hundred and seventy-six (176) feet east of the west line of said quarter section, thence running east parallel with the north line of said quarter section one hundred and thirty-one (131) feet, thence south parallel with the west line of said quarter section, one hundred (100) feet, thence west, parallel with the north line of said quarter section one hundred and thirty-one (131) feet, thence north parallel with the west line of said quarter section, one hundred (100) feet to the place of beginning.

22 Also, part of the southeast quarter ($\frac{1}{4}$) of section twenty-four (24) in township sixteen (16) north of range three (3) east, bounded as follows: Beginning at a point eleven hundred and ninety-five (1195) feet south of the north

line and thirty (30) feet east of the west line of said quarter section, thence running east parallel with the north line of said quarter-section one hundred and thirty-one (131) feet, thence south parallel with the west line of said quarter section one hundred (100) feet, thence west, parallel with the north line of said quarter section one hundred and thirty-one (131) feet, thence north parallel with the west line of said quarter section and along the east side of Central avenue one hundred (100) feet to the place of beginning.

Also, a part of the southwest quarter ($\frac{1}{4}$), section twenty-eight (28), township sixteen (16) north, range four (4) east, as follows, to wit: Beginning at a point on the east line of Brightwood avenue one hundred and fifty (150) feet south of the south line of the Pendleton Gravel Road, thence north along the east line of Brightwood avenue one hundred and fifty (150) feet to the south line of the Pendleton Gravel Road, thence northeasterly with the south line of the Pendleton Gravel Road one hundred and fifty (150) feet to a point thence south and parallel with the east line of Brightwood avenue two hundred and thirty-two and two one-hundredths (232.02) feet more or less to a point at right angles and opposite to the place of beginning, thence west one hundred and twenty-five and five-tenths (125.5) feet more or less to the place of beginning.

Also, Block B. Langsdale Estate partition subdivision of the south half of the south-west quarter section 26, township 16, range 3, in the City of Indianapolis, particularly described as follows, to wit:

Commencing on the south line of said half quarter section at a point 794.75 feet west of the south-east corner thereof, thence west on said south line 198 feet to the center of the Cleveland, Cincinnati and Chicago Railway Company's right of way; thence north-westwardly along the center of said right of way 1875 feet to the north line of said half quarter section; thence east on said north line 1040 feet to the center of Fall Creek; thence south $39\frac{1}{4}$ degrees, east 500 feet; thence south $77\frac{1}{4}$ degrees, east 300 feet; thence south 11 degrees, west 900 feet to the commencing point, containing 26 acres, subject to the right of way of said Railway Company.

All in Marion County, in the State of Indiana.

Also, all the buildings, gas works, gas holders, reducing stations, fixtures and machinery, situate on or appertaining to the above-described real estate.

Also, the pumping station and plant owned by said Gas Company and all the machinery and appurtenances thereunto belonging and the leasehold interest in real estate upon which the same is situated in section one (1) Township nineteen (19) north, Range five (5) east, in Hamilton County, Indiana.

Also, the pumping station and plant owned by said Gas Company and all the machinery and appurtenances thereunto belonging and the real estate upon which the same is situated, to wit:

Part of the north-west quarter ($\frac{1}{4}$) of the south-west quarter ($\frac{1}{4}$) commencing at the north-west corner of the said north-west quarter ($\frac{1}{4}$) running south along the public road forty (40) rods or 660 feet; thence east forty (40) rods or 660 feet; thence north forty (40) rods or 660 feet; thence west forty (40) rods or 660 feet to the place of beginning. Said described tract containing ten (10) acres, all in section thirty-two (32) township twenty-two (22) north, range seven (7) east, in Madison County in the State of Indiana.

Also, all the artificial gas mains and pipes of said party of the first part, laid and lying in and throughout said city of Indianapolis and its vicinity, amounting in all at this time to about one hundred and forty (140) miles, besides connecting pipes, together with all meters, machinery and appurtenances, of whatever name or description, appertaining to or used in connection with the artificial gas works and plant of said party of the first part, and any and all renewals and improvements, additions to or extensions of the said mains and pipes, meters, machinery and appurtenances, that may at any time hereafter be made.

Also, all the high-pressure wrought iron natural gas pipe lines and mains of said Gas Company, described as follows:

1. A line of twelve (12) inch pipe extending in a northerly direction from the intersection of Meridian and Twenty-
23 first streets in the city of Indianapolis, Marion County, Indiana, through said Marion County and into Hamilton County, Indiana, a distance of about twenty-two (22) miles to the reducing station near Noblesville in said Hamilton County.

2. A line of ten (10) inch pipe extending in an easterly and northeasterly direction from the intersection of South and Pennsylvania streets in said City of Indianapolis, through said Marion County and into Hamilton County, Indiana, a distance of about nineteen (19) miles to Fisher's Station in said Hamilton County.

3. A line of ten (10) inch pipe extending east and north from the intersection of West and Morris streets in said city of Indianapolis, through Marion, Hamilton and Madison counties, Indiana, a distance of about fifty (50) miles to a point in Section 11, Township 22 North, Range 7 East, about one (1) mile south of the Grant county line.

4. A line of eight (8) inch pipe extending in a northeasterly direction from the reducing station near Noblesville, Hamilton county, Indiana, through Hamilton and into Tipton county, Indiana, a distance of about fourteen (14) miles, to a point in Section 30, Township 21 North, Range 6 East.

5. A double line of eight (8) inch pipe extending east from the reducing station near Noblesville, Hamilton county, Indiana, in Hamilton county, a distance of about five (5) miles to a point in Section 27, Township 19 North, Range 5 East.

6. A double line of eight (8) inch pipe extending northeast from the pumping station owned by the Gas Company, in Section 1, Township 19 North, Range 5 East, where it connects with the ten (10) inch line described at No. 3, a distance of about two and one-half ($2\frac{1}{2}$) miles to a point in Section 32, Township 20 North, Range 6 East, and from thence a single line of eight (8) inch pipe extending northeast and north of about seven and one-half ($7\frac{1}{2}$) miles to a point between Sections 26 and 35, Township 21 North, Range 6 East, where it again connects with said ten (10) inch line. All in Hamilton and Madison counties, Indiana.

7. A line of eight (8) inch pipe extending northwest from the pumping station aforesaid where it connects with the ten (10) inch line described at No. 3, a distance of about two (2) miles to a point in Section 35, Township 20 North, Range 5 East, where it connects with the eight (8) inch line first described.

8. A line of eight (8) inch pipe extending west a distance of about five (5) miles from a point between Sections 26 and 35, Township 21 North, Range 6 East, to a point between Section 30, Township 21 North, Range 6 East, and Section 25, Township 21 North, Range 5 East, where it connects with the eight (8) inch line first described.

9. A line of six (6) inch pipe extending East a distance of about five (5) miles from Fisher's Station, Hamilton county, Indiana, where it connects with the ten (10) inch line described at No. 2, to a point in Section 36, Township 18 North, Range 5 East, and thence north and northeasterly a distance

of about two and one-half ($2\frac{1}{2}$) miles to a point between Sections 19 and 30, Township 18, North, Range 5 East.

10. A line of six (6) inch pipe extending north from a connection with the (10) inch line described at No. 3, at a point between Sections 31 and 32, Township 22 North, Range 7 East, a distance of about two and one-half ($2\frac{1}{2}$) miles to a point between Sections 19 and 20, Township 22 North, Range 7 East.

11. A line of six (6) inch pipe extending north from a connection with the ten (10) inch line described at No. 3, at a point in Section 15, Township 22 North, Range 7 East, a distance of about one (1) mile to a point in Section 10, Township 22 North, Range 7 East.

12. A line of six (6) inch pipe extending from a connection with the ten (10) inch line described at No. 3, at the intersection of Sherman Drive and Washington street in the city of Indianapolis, east in Washington street, a distance of about four (4) miles to Line street, in the town of Irvington, Marion County, Indiana.

Also, all the lines of four (4), three (3) and two (2) inch pipe owned by said Gas Company—about forty-two (42) miles—by which the above described pipe lines are connected with each other and with natural gas wells in the natural gas field in the counties of Marion, Hamilton, Tipton, Madison and Grant, in the said State of Indiana.

24 Also, the certain telephone line now erected and used in connection with the said natural gas pipe-lines, with its stations, machinery, fixtures, instruments and appurtenances, together with all rights of way upon which said pipe-lines are laid, and said telephone line constructed; and all the leases and grants of real estate, and licenses touching the same, in the said counties of Marion, Hamilton, Tipton, Madison and Grant, or elsewhere in said State of Indiana, now held or hereafter to be taken and held by said Gas Company for the purpose of sinking and maintaining natural gas and oil wells, for exploring for natural gas and oil, and securing and transporting such natural gas to said pipe-lines, or any pipe-line hereafter laid, or to any reducing station of the party of the first part, now or hereafter constructed in or near said city of Indianapolis, together with any and all natural gas and oil wells, with the machinery and appurtenances thereunto belonging now, held or which may hereafter be held by said Gas Company.

Also, all the natural gas pipe-lines and systems of the party of the first part—about one hundred and sixty-five (165) miles—embracing the high and low pressure systems lying and being in said city of Indianapolis, and in the towns of Irvington and Woodruff Place, and villages of Mapleton, Millersville and Malott Park, in said County of Marion; and also, all the street regulators, safety escapes, service pipes and street boxes, connected with the said natural gas pipe-lines and systems. Also, any and all renewals and improvements of each and every said natural gas mains, pipe-lines and systems, and all additions to and extensions of each and every said natural gas mains, pipe-lines and systems, that may at any time hereafter be made. Also, all coal, pipe and other supplies, tools, machinery and materials and other personal property of said Gas Company, that are or may be on hand.

Also, all the appurtenances connected with all and singular the above described property, and all corporate and other franchises, rights, easements, privileges and immunities, contracts and property, of whatever name or description, now belonging to or held, or which may hereafter be acquired or held by said Gas Company, together with the rents, issues, income, tolls and profits arising therefrom; it being the intention hereof to include herein all the property of the Gas Company, real, personal and mixed, in possession or expectancy, now owned or hereafter in anywise acquired, together with all and singular the tenements, hereditaments, rights, franchises, easements, privileges, immunities and appurtenances of such property, and premises hereinbefore expressed to be conveyed, or which may in any manner hereafter be acquired by said Gas Company, belonging or in anywise appertaining, or at any time hereafter held or enjoyed by the Gas Company, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues and profits thereof, and also the estate, right, title and interest, property, possession, claim and demand whatsoever, as well as in equity as in law, of the Gas Company, in and to the same and any and every part thereof; it being intended and it is hereby agreed that all the property of every kind, now owned or which may hereafter be in anywise acquired by the Gas Company, shall be as fully embraced within the provisions hereof and subject to the lien hereby created for securing the payment of all of said bonds, so to be from time to time issued, together with the interest thereon, as if the said property were now owned by the Gas

Company and were specifically described herein and conveyed hereby.

To Have and to Hold all and singular the above mentioned and described property, acquired, and to be hereafter acquired, tenements, hereditaments, rights, franchises, easements, privileges, immunities and appurtenances, and all the other property above mentioned, as intended to be conveyed, and the tolls, incomes, revenues, rents, issues and profits thereof, unto, and to the use of said The Trust Company of America and Ferdinand Winter, as Trustees, and their successors in trust, according to the nature, tenor and quality thereof, respectively, upon and for the trusts, intents and purposes, hereinafter expressed, of and concerning the same. And for further carrying into effect the conveyance, hereinbefore expressed to be made, the Gas Company does hereby appoint the Trustees, or their successors in said trust, the attorney of the Gas Company, to ask and receive payment and delivery of all and every the sums of money, goods, chattels and effects, hereinbefore expressed to be assigned and transferred to said Trustees, and to give effectual releases and discharges therefor, and for all and any of the purposes

25 aforesaid, or in this instrument expressed, to appoint an attorney or attorneys, or agent or agents, and from time to time to revoke such appointments, and to use the name of the Gas Company, and generally to act in relation to the premises as such Trustees or their successors shall think fit.

And it is Hereby Agreed and Declared, that the Trustees, or their successors, for the time being in said trust, shall respectively stand possessed of and entitled to all and singular the premises, property and rights hereinbefore expressed to be conveyed and intended to be conveyed, and shall be entitled to exercise the powers herein granted only upon and for the trusts, intents and purposes, and subject to the powers and conditions following, that is to say:

1. If the said bonds and the interest thereon shall be well and truly paid at the times and in the manner therein and herein expressed, then and in such case, the estate, right, title and interest of the Trustees shall cease, determine and become void, and upon proof being given to the reasonable satisfaction of the Trustees that all of the said bonds entitled to the benefit of the trust hereby created, have been so paid off, or satisfied, and upon payment of all costs, charges and expenses incurred by the Trustees in relation thereto, the Trustees

shall, at the request and expense of the Gas Company, reconvey and transfer and redeliver to it the property conveyed and transferred to the Trustees hereunder.

II. So long as the interest on the said bonds shall be duly and punctually paid when and as the same shall become due and payable, and so long as the covenants, terms and conditions thereof and of this indenture are faithfully paid, kept, preserved and performed, the Gas Company and its successors shall be entitled to possess, manage, operate and enjoy all the lands, premises, property, rights, franchises, easements, privileges and immunities hereinbefore described as conveyed, and intended to be conveyed hereby, and to receive, take and use the tolls, incomes, revenues, rents, issues and profits thereof, in the same manner and with the same effect as if this deed had not been made.

III. If any default shall be made in the payment of any installment of interest on any of the said bonds hereby secured according to the tenor of the coupons annexed hereto, when and as the same shall become payable and demanded, and such default shall continue for the space of six months, and, if any default shall be made in the performance of any other covenant herein contained to be performed by the Gas Company, and such default shall continue for the space of six months after notice thereof to the Gas Company and demand being made for the due performance thereof upon the Gas Company by said Trustees, then, and in every such case, the Trustees may in their discretion, and shall upon the request in writing of the holder or holders of a majority in amount of said bonds hereby secured then outstanding, and upon receipt of indemnity satisfactory to said Trustees declare the principal of all said bonds to be forthwith due and payable on notice to the Gas Company or its assigns. Such request may be evidenced by an instrument in writing, duly executed, by the holders of a majority in amount of said bonds then outstanding or by their representatives thereunto duly authorized in writing. If the principal of said bonds shall become due and payable, either as aforesaid, by reason of default and demand, or upon maturity, and shall not be paid according to the tenor thereof, and such default shall continue for six months after demand of the payment thereof, the Trustees may, and upon the request in writing of the holder or holders of the majority in amount of said bonds hereby secured and then outstanding, or by their represen-

tatives thereunto duly authorized in writing, and upon a tender of indemnity satisfactory to said Trustees for counsel fees and for reasonable expenses, shall personally or by their attorneys forthwith proceed and are hereby authorized and empowered to take possession of and sell, call in and convert into money, all and singular the property hereby conveyed, or intended to be conveyed, at public auction according to law. Such sale shall be made to the highest bidder, and the Trustees shall upon compliance by it with the conditions hereof assign, transfer and deliver to such bidder the said property so sold free from all the trusts hereof. Such sale and transfer shall be an absolute and final bar against the Gas Company, its successors and assigns, and against all right and equity of redemption in and to the said property so sold and against all persons claiming or to claim the same, under the Gas Company. After deducting from the proceeds of such

26 sale or sales just allowances for all expenses in effecting the same, as well as compensation for its own services, the Trustees shall apply the said purchase money to the payment of the interest on said bonds hereby secured in the order in which the installments of such interest shall have become due, but without interest upon such interest, ratably to the persons holding the coupons evidencing the right to such interest, and after paying all such interest shall then apply the balance of such purchase money ratably to the payment of the principal on said bonds. If after the payment of the principal and interest of all of the said bonds any surplus shall remain, the Trustees shall pay over to the Gas Company any such surplus or remainder.

At any sale of the said property so conveyed, or intended to be conveyed hereunder, made to enforce the security of these presents pursuant to the power hereby granted, or by judicial authority, the Trustees may at their option, and shall, if thereunto requested in writing by the holders of one-fourth in nominal amount of said bonds then outstanding, and if furnished with indemnity satisfactory to said Trustees, bid for and purchase, or cause to be bidden for and purchased, on behalf of the holders of all the bonds then outstanding, in the proportion of the respective interests of such holders, the said property so sold, provided that the price at which the purchase hereby authorized may be made shall not, in aggregate, exceed the amount of all said bonds hereby secured and then outstanding, and the interest accrued thereon and unpaid

to the time of sale, together with the costs and expenses of such sale.

Nothing herein contained shall in anywise prohibit or forbid any of the holders of said bonds from bidding at such sale, or from purchasing said property upon such sale; but any of said holders may purchase said property at any such sale, and in the event of such purchase by them, they shall be allowed a credit as and for so much cash on account of the purchase money payable by them, of a sum equal to the amount to which such purchasers, as holders of the bonds of the Gas Company, would otherwise have been entitled to upon a distribution of the net proceeds of the sale among the bondholders.

The Trustees may, however, in their discretion, resort to any proceedings, legal or equitable, in their judgment necessary or expedient for the enforcement of the lien hereby created upon all or any part of the property hereby conveyed, or intended to be conveyed, or for the collection and conversion into money of any part of the trust estate.

Pending any proceeding for a sale to be made by it, as hereinbefore provided, the Trustees, in their discretion and for the common benefit, may carry on the business of the Gas Company, and for the purpose of the said business may employ such agents on such terms as they may deem proper, and generally may do, or cause to be done, all such acts or things, in respect to the premises, as the Gas Company might have done or caused to be done. The Trustees shall, after deducting the expenses which they may deem necessary, expedient or proper to incur for the carrying on of said business, including just compensation for their own services, apply the residue of the income of the trust estate, and of the revenues of said business, in the manner herein provided with respect to the moneys which might arise on any sale of the trust estate by it under any of the provisions hereof.

IV. It shall be competent for the Gas Company, in case it shall have made default in any of the covenants or agreements herein contained other than those for the payment of the principal or interest of said bonds, to place itself in the same position respecting this mortgage which it occupied prior to such default, by performing the covenants and agreements of this mortgage as hereinbefore stipulated, if such performance be then possible, and the payment of all costs and charges and satisfactory indemnity against all liabilities incurred by the Trustees.

V. If at any time the Gas Company shall, for the purpose of changing the location of any — its works, or for the reason that any of the property hereby conveyed or intended to be conveyed is no longer necessary for its corporate purposes, desire to sell the same, it may, upon written assent thereto of the Trustees, and the payment to the Trust Company of America as Trustee of the purchase price, sell and convey any or all of the property, now owned or hereafter acquired by it and hereby conveyed, or intended to be conveyed, for the securing of the payment of the principal and interest of said bonds, and the Trustees shall thereupon, upon receipt by said Trust Company of such purchase money, release 27 from the lien of this mortgage the property so sold and conveyed by the Gas Company, and the money so received by the said Trust Company, Trustee, shall be paid out of it, or under its direction, in the purchase, improvement and equipment of other property which may be purchased or acquired by the Gas Company, or in the extension of its mains and service pipes, or in the construction or extension of its works, provided that no such purchase shall be made by the Gas Company to be paid for out of such money, except upon the approval of the Trustees, nor shall the Gas Company use any of the said moneys in payment for improvements or equipments of the property so purchased, or in payment for the extension of mains and service pipes, or for the construction or extension of works, except such payments are made with the approval of the Trustees; and all the property so purchased, acquired or constructed by the Gas Company shall immediately be and become, without any other act or conveyance on the part of the Gas Company, subject to the operation and lien of this mortgage.

And so much of said money so received by the Trust Company, Trustee, as shall not in any reasonable time be required by the Gas Company for the purchase, improvement or equipment of other property, or the extension of its mains and service pipes, or the construction or extension of its works, shall be applied by the Trustees to the purchase or redemption of the bonds and coupons hereby secured and then outstanding, which bonds shall, when so purchased or redeemed, be cancelled by the Trustees and surrendered to the Gas Company.

It is further agreed that the Gas Company may, at its option, sell, assign, grant, or convey, reconvey, release, sur-

render, or permit to lapse any of the leases, licenses, easements, grants, or contracts for natural gas and oil lands or for gas and oil wells, and for rights of way, constituting parts of its natural gas system and plant, and the same shall thereupon be withdrawn from the lien of this trust mortgage, and upon request of the party of the first part to be made in writing, said Trustees shall execute proper releases of the same from such lien: Provided, however, that said option shall not be exercised in such manner or to such extent, to be determined exclusively by the Trustees, as to impair the efficiency or value of the said natural gas pipe lines, systems and plants, for the uses and purposes for which they were constructed.

VI. The Gas Company shall and will from time to time hereafter, upon the demand of the Trustees, grant, convey, assign, transfer and set over unto the Trustees all real estate, which it may hereafter acquire, and all personal estate and other property, corporate rights and franchises which it shall hereafter in any manner acquire for its corporate uses and purposes, and shall and will also make, do, execute, acknowledge, seal and deliver to the Trustees, or cause to be made, done, executed, acknowledged, sealed and delivered to the Trustees, all and every such further acts, matters, things, deeds, conveyances and assurances in the law, for the better assuring, conveying and confirming unto the Trustees all and singular, the premises, estates, property, rights, easements and franchises, privileges and immunities, hereby conveyed or intended so to be, or which may hereafter be acquired by the Gas Company, as the Trustees, under the advice of counsel learned in the law, may desire and request, for the better effectuating and carrying out the provisions, objects and purposes of this mortgage, and securing the principal and interest of the bonds intended to be hereby secured; all of which estates and property shall be held by the Trustees under and upon the several and respective trusts, and for the uses and purposes and subject to the powers and authorities herein mentioned, declared, given and expressed.

VII. The action of the Trustees in regard to the enforcing, to any extent or in any manner, the lien created by this mortgage, either by taking possession, sale at auction, or by resort to judicial proceedings, or by any means authorized and contemplated hereby, and any and every suit, bill or proceeding in equity, or other action which may in any manner be had or taken for enforcing the lien hereby created for the securing the payment of the said bonds and coupons, or for

enforcing any of the trusts of this instrument, shall be at all times subject to the control of the holders of a majority in amount of said bonds then outstanding, their wishes being expressed in writing.

And it is further agreed that in case of any proceeding as hereinbefore authorized by reason of any default that may have occurred and continued as aforesaid, a majority in interest of the bond-holders, for the time being, shall have the
28 right to agree upon a plan or scheme for reorganization, which plan or scheme, when so agreed upon in writing and signed by such majority in interest, shall be in all respects binding and obligatory upon all the holders of such bonds or coupons.

VIII. And the Gas Company, for itself, its successors, and assigns, covenants and agrees to and with the said party of the second part, and its successors in the trust hereby created, that it will promptly and in apt time pay or cause to be paid all taxes and assessments that may be levied, assessed or imposed upon all and any of its property above described, or hereby conveyed or intended to be conveyed; that it will not allow or suffer any execution upon any judgment or decree of any court of record to be levied upon any of its property, and that it will not do or refrain from doing any act which shall render it liable to any suit or suits in equity for its dissolution, or for any remedy under any provision of any law of the State of Indiana at the time in force; and that it will keep alive the franchise of said Company to be a corporation, either by renewal, extension or other lawful proceedings until all of the bonds hereby secured shall have become due and payable either by declaration and notice, as herein provided or upon maturity.

IX. And the Gas Company for itself, its successors and assigns, in consideration of the premises, further covenants and agrees to and with the said party of the second part and its successors in said trust, that said party of the first part and its successors shall and will, at all times hereafter, provide for and pay the principal and interest of and upon the bonds hereinbefore recited and described, as the same shall become due and payable, and that it will at all times hereafter cause an office to be kept open in the City of New York, in the State of New York, for the transfer and registration of said bonds, and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of due presentment and of a demand for payment of

all and any of the bonds and coupons aforesaid which may become payable during the continuance of such default.

X. The Gas Company for itself, its successors and assigns, further covenants and agrees, that it will keep the property hereby mortgaged, liable to be injured or destroyed by fire, reasonably insured, and in case of destruction or damage by fire, all insurance money derived from such insurance shall be by it properly applied to replace, restore, or repair such property as may have been injured or destroyed, or to the purchase of other property needed for the maintenance or operation of its said natural and artificial gas plants, and such replaced or restored property shall immediately become subject to the lien of this mortgage.

XI. The Gas Company for itself, its successors and assigns irrevocably waives all benefit of any present or future valuation, stay, extension or redemption laws, and hereby irrevocably waives all right to have the mortgaged property and franchises marshalled upon any sale thereof, and consents that the same may be sold as one property.

XII. For the debt and bonds secured hereby the Gas Company is liable in personam, and any deficiency, after exhausting the mortgage security, may be enforced against the Gas Company, but not against its officers, directors, or stockholders individually; and it is expressly agreed between the parties hereto, and by every person who shall take or hold any bond or bonds issued hereunder, that no persons who are now or who may hereafter become officers, directors, or stockholders of the Gas Company shall in anywise be held liable for the payment of either the principal or interest of the bonds secured hereby, and any such liability is hereby expressly waived.

XIII. If any bond issued hereunder shall be mutilated, lost, or destroyed, the Gas Company may, under terms and conditions prescribed by its board of directors, issue and deliver in lieu thereof a new bond of like tenor, amount, and date, and bearing the same serial number, which bond, when so issued, shall be certified by the Trust Company, Trustee, upon due proof of such mutilation, loss, or destruction, and upon receiving indemnity satisfactory to the Trustees.

XIV. The Trustees agree to execute the trusts of these presents upon the following terms and conditions:

The Trustees may employ agents or attorneys in fact to aid it in the execution of said trust, and provided they shall

have exercised reasonable prudence and care in the selection and employment of such agent or agents for any such purposes, they shall not be responsible for loss or damages in the premises caused by the act, neglect or default of such agent or agents.

All the covenants, conditions, provisions and agreements herein contained may be specifically enforced by any court of competent jurisdiction.

The Gas Company shall and will indemnify and save harmless the Trustees against any loss and damage to which it may be subjected by the execution of this trust not caused by the personal misconduct or neglect of the Trustees.

The right of action under this indenture is vested exclusively in the Trustees, and under no circumstances shall any bondholder or bondholders have any right to institute an action or other proceeding under this indenture for the purpose of enforcing any right herein and hereby provided, or of foreclosing this mortgage, except in case of refusal on the part of the Trustees to perform any duty imposed on them by this indenture, and all actions and proceedings for the purpose of enforcing the provisions of this indenture shall be instituted and conducted by the Trustees according to their sound discretion, but the Trustees shall be under no obligation to institute any such suit or to take any proceedings under this indenture, or to enter any appearance or in any way defend any suit in which they may be made defendant, or to do anything whatever as Trustees until they shall be indemnified to their satisfaction against any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and against all claims for damages for which they may become liable or responsible on proceeding to carry out such request or demand. The Trustees may nevertheless begin suit or appear in and defend any suit or to do any act in their judgment proper to be done by them as such Trustees, without such indemnity, and in such case it shall be compensated therefor from the trust fund.

The Trustees shall be under no obligations to recognize any person as owner or holder of any bond secured hereby, or to do or refrain from doing any act pursuant to the request or demand of any persons, until such supposed holder or owner shall produce such bonds and deposit the same with the Trustees.

It shall be no part of the duty of the Trustees to file or record this indenture as a mortgage of conveyance of real estate, or as a chattel mortgage, or to renew such mortgage, or to procure any further, other or additional instruments of

further assurance, or to do any other act which may be necessary or proper to be done for the continuance of the lien hereof, or for giving notice of the existence of such lien, or for extending or supplementing the same, nor shall it be any part of their duty to effect insurance against fire or other damage on any portion of the mortgaged property or to renew any policies of insurance or to keep themselves informed or advised as to the payment of any taxes or assessments, or to require such payment to be made, but the Trustees may in their discretion do any or all of the matters and things in this paragraph set forth, or require the same to be done; they shall only be responsible for reasonable diligence in the performance of the trust. They shall be entitled to be reimbursed for all proper outlays of every kind by them incurred in the discharge of their trust, and to receive a reasonable and proper compensation for any services that they may at any time perform in the discharge of the same; and such compensation and disbursements shall constitute a lien on the mortgaged property and premises.

In case at any time it shall be deemed necessary by the Trustees of the Gas Company to make any investigation respecting any fact relative to any proposed action of or by such Trustees, the certificate of the Gas Company under its corporate seal, attested by the signature of its President and the affidavit of one or more of its Directors, shall be conclusive evidence of such fact for the purpose of protecting the Trustees in any action that they may take by reason of the supposed existence of such fact.

All recitals, statements of fact and representations herein contained are made on behalf of the Gas Company, and the Trustees assume no responsibility as to the correctness of the same, nor are the Trustees to be understood as making any representations as to the character, extent or value of the above-described property, or in reference to the title thereto, or the right or power of the Gas Company to mortgage the same.

The Trustees may resign and discharge themselves of the trusts created by these presents, upon a notice in writing to the Gas Company given three months before such resignation shall take effect, or upon such shorter notice as may be
30 accepted by the Gas Company as adequate notice, and upon due execution of proper conveyances and assignments.

The Trustees may also be removed upon reasonable notice, with or without cause, upon the written request of the holders of a majority of said bonds, evidenced by an instrument or

concurrent instruments in writing, executed under the hands and seals of the said holders of a majority in amount of the bonds secured hereby and then outstanding. In the event of the failure of not less than a majority as aforesaid to agree upon new trustees, the same may be appointed by the judge of the Circuit Court of Marion County, in the State of Indiana, upon application made by the Gas Company, or by the holders of a majority of said bonds, and upon such notice as such judge may prescribe. Any vacancy in the office of the Trustees hereunder, however arising, may be permanently filled in such manner as may be agreed upon by and between the Gas Company and the holders of such majority of said bonds; or in the event of their failure to agree, may be filled by the judge of the Circuit Court aforesaid upon application made as above.

XV. And the Gas Company doth covenant with the Trustees, as follows:

First: That the Gas Company will execute further and necessary assurance of the title to said premises, and will fore-
ever warrant said title.

Second: That all the covenants, stipulations and agreements of this indenture shall extend to the successors and assigns, or other legal representatives of the parties hereto, respectively.

In Witness Whereof, said party of the first part, The Indianapolis Gas Company, has caused these presents to be executed by its President, sealed with its corporate seal, and attested by its Ass't Secretary, and the said The Trust Company of America, party of the second part, has caused these presents to be executed by its Vice-President, sealed with its corporate seal, and attested by its Secretary, the day and year herein first written; and the said Ferdinand Winter has also subscribed his name hereto.

The Indianapolis Gas Company,

By F. S. Hastings,
President.

[Seal.]

Attest:

Edw. Beers,
Ass't Secretary.

The Trust Company of America,

By Wm. H. Leupp,
Vice-President.

[Seal.]

Attest:

Raymond J. Chatry,
Secretary.

F. Winter. [Seal.]

I, John H. Bogardus, a notary public in and for said City and County of New York, in the State of New York, do hereby certify that on this 17th day of October, A. D. 1902, personally appeared before me, Frank S. Hastings, personally known to me to be the President of The Indianapolis Gas Company, and acknowledged that he had executed the foregoing mortgage as the mortgage of the said The Indianapolis Gas Company and that he had signed the same and caused to be affixed thereto the corporate seal of the said The Indianapolis Gas Company, in his official capacity on behalf of said company, as the mortgage of said company, and had delivered the same, for the uses and purposes therein expressed, as his free and voluntary act for and on behalf of said corporation, and as the free and voluntary act of said corporation.

John H. Bogardus,

Notary Public, Kings County.

(Certificate filed in New York County.)

I, John H. Bogardus, a notary public in and for said County and State, do hereby certify that on this 17th day of October, A. D. 1902, personally appeared before me, Edward Beers, personally known to me to be the Assistant Secretary of The Indianapolis Gas Company, and acknowledged that he had executed the foregoing mortgage as the mortgage of the said The Indianapolis Gas Company, and that he had signed the same and affixed the corporate seal of the said The Indianapolis Gas Company to the same in his official capacity on behalf of said company, as the mortgage of said company, and had delivered the same, for the uses and purposes therein expressed, as his free and voluntary act for and on behalf of said corporation, and as the free and voluntary act of said corporation.

In Witness Whereof, I have hereunto set my hand and

Exhibit A.

affixed my official seal on the day and year aforesaid, at the City and County of New York, in the State of New York.

John H. Bogardus,

(Seal)

Notary Public, Kings County.

(Certificate filed in New York County.)

City of New York, }
State and County of New York, } ss.:

I, Charles J. Gunther, a notary public in and for the said City of New York, in the County of New York, in the State New York, do hereby certify that on this 18th day of November, A. D. 1902, personally appeared before me, William H. Leupp and Raymond J. Chatry, personally known to me to be the identical persons whose names are attached to the foregoing mortgage as having executed the same on behalf of the Trust Company of America, Trustee, and the said William H. Leupp, also personally known to me to be the Vice-President, and the said Raymond J. Chatry, also personally known to me to be the Secretary of the said Trust Company of America, and acknowledged that they had executed the foregoing mortgage and had signed the same and had affixed the corporate seal of the said Trust Company of America to the same in their official capacity, on behalf of the said Trust Company of America, for the uses and purposes therein expressed, as their free and voluntary act for and on behalf of said corporation, and as the free and voluntary act of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year aforesaid, at the City of New York, in the County of New York.

Chas. J. Gunther.

(Seal)

*Notary Public (No. 89), City and
County of New York.*

State of New York, }
County of New York, { ss.:

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, that Charles J. Gunther, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instru-

ment and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the County of New York, dwelling in the said County, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgement is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 18th day of November, 1902.

Thos. L. Hamilton,
Clerk.

(Seal)

32 State of Indiana, }
Marion County, { ss.:

Before the undersigned Charles Russell Leas, a Notary Public in and for said County and State, this 20th day of October, 1902, personally came Ferdinand Winter and acknowledged the execution of the foregoing mortgage or deed of trust.

Witness my hand and notarial seal.

Charles Russell Leas,
N. P.

(Seal)

(My Commission expires Oct. 1, 1906.)

33

EXHIBIT B.

Agreement of Lease by and Between

The Indianapolis Gas Company

and

Citizens Gas Company of Indianapolis.

34 Agreement of Lease, made and entered into the 30th day of September, 1913, by and between The Indianapolis Gas Company, a corporation duly organized and acting under and pursuant to the laws of the State of Indiana, party of the first part, and hereinafter referred to as the "Lessor," and Citizens Gas Company of Indianapolis, a corporation duly organized and acting under and pursuant to the laws of the State of Indiana, party of the second part, and hereinafter referred to as the "Lessee."

This Indenture Witnesseth, That the said parties each for itself, its successors and assigns, and each in consideration of the covenants and agreements herein made by the other, have covenanted and agreed and do hereby covenant and agree each with the other and its successors and assigns as follows, to-wit:

The Lessor doth hereby grant, demise and lease unto the Lessee all and singular the real estate, buildings, machinery and equipment owned and possessed by the Lessor and used by it in or useful for the manufacture, storage and distribution of gas and the by products resulting from the manufacture of gas and all other business incidental thereto, all pipe lines, mains, connections, gate valves, regulators, vaults, man-holes, and other parts of the system of the Lessor used in or useful for the distribution of gas in the City of Indianapolis and the community about said city, and meaning hereby to include all property, real, personal or mixed, franchises, rights and privileges, respecting the manufacture and sale of gas which are owned or otherwise controlled by the Lessor and all contracts made by it with all persons or corporations, together with all the rights, privileges, easements and appurtenances thereto belonging, including the right to demand and receive to the Lessee's own use all the tolls, rents, revenues, income and profits of all the property leased, and particularly including the following described real estate situate in the County of Marion, State of Indiana:

Part of out-lots one hundred and sixty-six (166), one hundred and sixty-seven (167), and one hundred and sixty-eight (168), in the said City of Indianapolis, described as follows: Commencing at a point on the north line of Pratt Street, at the intersection of the west line of that part of said out-lot one hundred and sixty-eight (168), owned by the Lafayette & Indianapolis Railroad Company (now the Cleveland, Cincinnati, Chicago & St. Louis Railway Company), thence north along the west line of said part of said out-lot owned by said railway company one hundred and fifty (150) feet, thence west and parallel with said Pratt street to the center of the Central Canal, thence southeast along the center of said canal to the north line of said Pratt street, at its intersection with said canal, thence east along the north line of said Pratt street to the place of beginning, saving and excepting the easement for canal purposes over and upon the same, of the Central Canal.

Also, part of said out-lots one hundred and sixty-seven

(167) and one hundred and sixty-eight (168) in said city of Indianapolis, described as follows: Commencing at a point in the west line of the land owned and occupied by the Cincinnati, Indianapolis, St. Louis and Chicago Railway Company (now Cleveland, Cincinnati, Chicago and St. Louis Railway Company), in said out-lot one hundred and sixty-eight (168), one hundred and fifty (150) feet north of the north line of Pratt street, thence running north fifty (50) feet to a point, thence west parallel with said Pratt street, to the Indiana Central Canal, thence in a southeasterly direction, with the line of said canal to a point west of the place of beginning and one hundred and fifty (150) feet north of said Pratt Street, thence east parallel with said Pratt street to the place of beginning.

Also, Block B, Langsdale Estate partition subdivision of the south half of the southwest quarter section 26, township 16, range 3, in the city of Indianapolis, particularly described as follows, to-wit:

Commencing on the south line of said half quarter section at a point 794.75 feet west of the southeast corner thereof, thence west on said south line 198 feet to the center of the Cleveland, Cincinnati and Chicago Railway Company's right of way; thence northwesterly along the center of said right of way 1875 feet to the north line of said half quarter section; thence east on said north line 1040 feet to the center of Fall Creek; thence south $39\frac{1}{4}$ degrees, east 500 feet; thence south $77\frac{1}{4}$ degrees, east 300 feet; thence south 11 degrees, west 900 feet to the commencing point, containing 26 acres, subject to the right of way of said Railway Company.

Also, beginning at a point in the centre of Fall Creek on the south line of the north half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section twenty-six (26), township sixteen (16) north, range three (3) east, said point being (109.6) one hundred and six tenths feet east of the centre of the C. C. C. & St. L. R. R., and fifty-six and one half ($56\frac{1}{2}$) feet east of the west abutment of Fall Creek bridge as now located; thence east along the south line of said half quarter section, eight hundred sixty-eight and one-half ($868\frac{1}{2}$) feet to the west side of Fall Creek; thence northwest along the west side of Fall Creek to a point one hundred sixty (160) feet north of the south line of said half quarter section, measured at right angles thereto; thence west parallel to, and one hundred sixty (160) feet distant from the south line of said half quarter section, seven hundred forty-eight (748) feet across an island

in Fall Creek to the east side of the west channel of said creek; thence southwest along said creek to place of beginning, containing two and ninety-six hundredths ($2 \frac{96}{100}$) acres, more or less.

Also, Lots number eighteen (18), Nineteen (19), twenty (20), twenty-one (21), Forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), forty-eight (48), forty-nine (49), fifty (50), fifty-one (51), fifty-two (52) and fifty-three (53) in Joshua W. Langsdale's Addition to the city of Indianapolis according to a Subdivision of a part of the South half of the Southwest quarter of Section twenty-six (26) in Township Sixteen (16) north of range three (3) east recorded in Plat Book Seven (7) page forty-eight (48) in Recorder's office of Marion County, Indiana.

Excepting from the operation hereof, however, the Lessor's corporate seal and books of record and its deeds, grants, plats and other instruments and documents containing or constituting the evidence of its rights and title to the property now or hereafter owned by the Lesser; and also excepting all cash on hand, and also excepting the property known as the Majestic Building situated at the Northeast corner of Maryland and Pennsylvania streets in the city of Indianapolis, Marion County, Indiana, the property situated at the corner of 16th and Alvord Streets in the city of Indianapolis, being lots 1, 2, 3, 4 and 5 in Square 1, S. A. Fletcher, Jr.'s Northeast Addition.

Provided always that this lease be subject to all the provisions of a certain indenture of Mortgage of the Indianapolis Gas Company to the Trust Company of America and Ferdinand Winter, Trustees, dated the 1st day of October, 1902, securing an authorized issue of bonds in the sum of \$7,500,000 of which at this time there are issued and outstanding \$4,833,000, and provided further this lease is made expressly subject to all contracts of lease, all contracts for service and all contracts for employment entered into by the Lessor, other than contracts for employment relating to the operation of the Majestic Building, and other than any contracts of rental or employment relating to the New York Office recently maintained by the Lessor.

To Have and to Hold the same unto the Lessee, its successors and assigns with the right to demand and receive for its own sole use and benefit all tolls, rents, dividends, earnings, profits, revenues and income to be derived from the same, or

any part thereof, and from the exercise of the rights, powers and franchises and other property hereby demised unto the lessee, for the term of ninety-nine years from the first day of October, 1913, on the following conditions, to-wit:

The lessee and lessor consent and agree that the Public Service Commission of Indiana and any other Commission or body that may be created by the State of Indiana in the place and stead of said Public Service Commission shall at all times have the same power, authority and right to regulate the rates, tolls, charges and service of said lessee and lessor, or either of them, in the same manner and to the same extent as said Commission would have if said lessee was operating under an indeterminate permit as defined in and according to the provisions of the Shively-Spencer Utility Commission Act, and this lease shall continue and be in full force and effect so long as said lessee shall abide by and observe the terms of said condition and agreement but in no event to exceed ninety-nine years. And if at any time said lessee denies or disputes the right of said Public Service Commission or other commission or body created in the stead of said Public Service Commission to so regulate the rates, tolls, charges or service of said lessee or lessor or either of them as fully and to the same extent and manner as might lawfully be done if said lessee and lessor were operating under an indeterminate permit, then said commission or body subject to the conditions set forth in Article 27½ Section (8) hereof may declare this lease terminated and the same shall thereafter be null and void.

36 And said term of this lease is also on the provision and condition that said lessee shall keep and perform all covenants and agreements herein contained on its part to be kept and performed, and shall yield and pay the rent which it hereby covenants and agrees to yield and pay to the amount and in the manner and at the time and the place hereinafter provided.

1. The Lessor covenants that during the continuance of this lease it will either maintain its corporate organization or that if for any reason by expiration of its corporate life or otherwise it cannot maintain the same that it will seasonably cause all its property hereby leased to be transferred to a new corporation which will in the same way either maintain its corporate organization or in turn convey its property to another which will so do, and for that purpose the Lessor and its successors will hold all necessary meetings, elect all necessary directors and officers and make and

keep all necessary records, reports and returns required by law, and will at the request and expense of the Lessee exercise or cause to be exercised all franchises and do and perform or cause to be done or performed all acts, lawful and consistent with its rights hereunder, as shall be proper and necessary for the due protection, preservation and full enjoyment of the Lessee of all the property, rights, franchises, contracts and interests hereby demised or granted to it, and the proper extension or renewal from time to time of such right and franchises, and further to carry out the true intent and meaning of this instrument, provided the Lessee shall assume the responsibility for securing all extensions of such franchises as hereinafter provided. The Lessor covenants that the Lessee may use the name of the Lessor in bringing, prosecuting or defending any suits or proceedings in law or equity which may be necessary or proper in the opinion of the Lessee, for taking action hereafter for the protection and preservation and full enjoyment by the Lessee as such, of all the property rights, franchises and privileges hereby leased, or do or undertake any act or thing that may be necessary or proper in the opinion of the Lessee for the full enjoyment of this lease, but the Lessee shall have and hold the Lessor harmless and indemnified from and against all loss, cost, damage and expense whatsoever arising therefrom.

The Lessee may at all reasonable and convenient times have access to and make copies of the Lessor's plats, deeds, grants and other instruments and documents containing or constituting the evidence of its right and title to the properties, contracts, powers, rights, privileges and franchises hereby leased and demised.

2. The Lessor covenants that the Lessee shall have full, quiet and uninterrupted possession and enjoyment of the leased property during the term hereby created as long as there shall be no forfeiture of this lease by the award of arbitrators or otherwise as herein provided, and that it will warrant and defend the Lessee in such use and enjoyment of the entire property as described above during the entire term of this lease, subject, however, to the lien of the mortgage herein mentioned and described; provided, however, this covenant shall not be construed as imposing any liability upon the Lessor to secure extensions or renewals of franchises now enjoyed or a warranty for the continued enjoyment of franchises now held by the Lessor.

And provided also this covenant shall not be deemed as

imposing any obligation upon the Lessor to preserve present grade lines and locations of its pipes and mains, but the entire obligation arising out of any change in any such grade lines or locations shall be and hereby is assumed by the Lessee.

3. The Lessor covenants that in case any part of the property hereby leased shall become so worn or damaged, as to be no longer suitable or safe for use, or if any of said property shall become no longer necessary for the purposes for which it was leased, the Lessee may sell, alter, change or replace such property, and the Lessor will act with the Lessee in any sale thereof, and in executing and delivering such instruments as may be necessary to transfer the Lessor's title therein to the vendee, provided that such sales shall always be in accordance with the terms of all mortgages at that time existing upon the property, and provided further that in the absence of mortgage provisions for such a transaction, the proceeds of any such sale or sales shall be applied to the substitution of property of value at least equal to that sold, the title to which shall be taken in the name of the Lessor, or shall be expended to increase the value of the
37 other property hereby leased, or shall be applied toward the redemption and retirement of the Lessor's bonds under the above-mentioned mortgage.

4. The Lessor covenants that it will at any time or times hereafter upon reasonable request of the Lessee make, do and execute, or cause or procure to be made, done and executed, all and every such further and other reasonable acts, conveyances, transfers, assignments and assurances for the better and more effectually vesting and confirming the property hereby leased or intended so to be, in and to the Lessee as such.

5. The Lessor covenants that it will at the Lessee's request and expense comply with all requirements of law in so far as the Lessee cannot act in its stead, and will in like manner at all times when it cannot be done by the Lessee, itself, do such acts and execute such instruments as may be necessary or proper to carry out the true intent of these presents.

6. The Lessor covenants that at the date of the execution hereof the total authorized bonded indebtedness secured upon the property of the Lessor is Seven Million Five Hundred Thousand Dollars (\$7,500,000) par value of bonds secured by the said mortgage of The Indianapolis Gas Company to

the Trust Company of America and Ferdinand Winter, Trustees, dated October 1st, 1902, of which bonds Four Million Eight Hundred Thirty-three Thousand Dollars (\$4,833,000) at par have been issued and are outstanding.

All or any part of the uncertified and unissued bonds of the Lessor which may be in the hands of the Trustees under its said mortgage may be used by the Lessee for the purpose provided in said mortgage, and to that end whenever the Lessee shall need funds for any such purpose, it shall in writing notify the Lessor of the amount of money required for such purpose; such notice shall be signed by the President or Vice-President of the Lessee, attested by its Secretary and sworn to by one of the officers of the Lessee, and shall conform to the provisions of the said mortgage of the Lessor relating to the issue and delivery of the bonds secured by said mortgage; whereupon the Lessor shall by resolution of its Board of Directors call upon the Trustee under said mortgage in the manner therein provided for the certification and delivery of such an amount of said bonds as may be certified and delivered for the purpose at the time under the terms of said mortgage, and upon receipt of said bonds the Lessor shall deliver the said bonds to the Lessee to be used by it for the purpose aforesaid, it being expressly understood that the Lessee shall provide the funds necessary to make such extensions or betterments over and above the amount which may be realized upon said bonds so certified and delivered to it, and shall have no lien against the property of the Lessor on account thereof, and no claim for the repayment thereof by the Lessor, except as is in paragraph Fifteen hereof expressly provided.

It is expressly understood and agreed, however, that no bonds of the Lessor shall be used by the Lessee for the purpose of making any extensions or betterments to the plant and system of the Lessor, which are not reasonably necessary or desirable in developing the plant and system of the Lessor, considered as a separate and complete system apart from the property, plant and system of the Lessee; and should the Lessor not deem the extensions and betterments so proposed to be made by the Lessee to the Lessor's plant and system, on account of which bonds of the Lessor are desired to be used by the Lessee, of the character thus defined, then the question shall be submitted to arbitrators as hereinafter provided, and the conclusion of such arbitrators shall be final and binding on both parties hereto.

The Lessor covenants that it will not, during the term of this lease authorize the creation of any mortgage or other lien upon its property hereby demised, except the same be made in renewal or continuation of the mortgage hereinbefore mentioned, or pursuant to the provisions of Article 27 hereof, and that it will create no debts, becoming a party to no contracts, and incur no obligations of any kind whatsoever during the term of this lease which would constitute a lien upon the property hereby leased or in any way interfere with the Lessee's use and enjoyment thereof.

7. The Lessor covenants that whenever, during the term of this lease, the principal of the bonds secured by the mortgage hereinbefore mentioned upon the Lessor's property shall become due and payable, the Lessor will upon the written request of the Lessee execute in the name of the Lessor, all necessary papers and instruments as shall be requisite to the extension of the time of payment of the principal so maturing, or to the discharge thereof by the substitution therefor of renewal bonds and mortgage. The Lessor covenants to do all acts and things necessary or proper to be done on its part to obtain such extension, renewals or refunding, the negotiations for which shall be controlled by the Lessee. No greater amount of bonds in principal shall be issued or secured by any such renewal or refunding mortgage than the amount of bonds thereby refunded and such refunding bonds shall not bear a higher rate of interest than five per cent. per annum.

38 Such bonds shall be sold by the Lessee at the highest price which it is able to obtain for the same and the proceeds shall be applied to the retirement of the outstanding bonds; should such refunding bonds be sold below par, then the Lessee shall pay any additional sum necessary to complete the payment of the outstanding bonds, and shall have no lien upon the property or charge against the Lessor therefor; should such refunding bonds sell at a premium, then such premium shall belong to the Lessee. Until payment in full of the principal and interest of all bonds secured by the existing mortgage or by any renewal or refunding mortgage, such bonds and any mortgage by which they are secured shall be and remain a lien upon all of the property, contracts, powers, rights, privileges and franchises of the Lessor which are now subject or which may hereafter become subject to the lien of any such mortgage, superior in all respects to any right of the Lessee under this lease. And any such refunding mortgage shall cover

all property of the Lessor covered by this lease and not theretofore disposed of, and also all additions, extensions or betterments thereto made by the Lessee hereunder, and the lien of such mortgage thereon shall be superior to any right, title or interest therein of the Lessee or of any person claiming under the Lessee.

In event the Lessee shall fail at least six (6) months prior to the maturity of the mortgage bonds of the Lessor hereinabove referred to, or of any renewal or refunding bonds issued to retire the same, to complete arrangements for the refinancing of such outstanding obligation and furnish satisfactory evidence to the Lessor that it has so done, then the Lessor shall be permitted to take entire charge of such refinancing, including the sale of such renewal or refunding bonds at the best price which it is reasonably able to obtain therefor, and the Lessee shall thereupon pay to the Lessor upon demand the difference between the par amount of the bonds so refunded and the net amount realized from the sale of a like amount of refunding bonds.

8. The Lessor covenants and agrees that the Lessee may make physical connections of its pipe lines with those of the Lessor, such connections to be made at the expense of the Lessee and to remain its sole property.

9. The Lessee covenants and agrees that it will take over said leased property subject to the existing contract with Semet Solvay Company dated June 11, 1912, covering the installation of by-product coke ovens and other betterments and enlargements and other matters related thereto, and will fully carry out and perform all the obligations of the Lessor thereunder, and it will cause said contract to be fully performed in its essential features by the said Semet Solvay Company unless it is found wise and expedient to alter said contract which may be done with the written consent of the Lessor, and said consent is not to be unreasonably withheld.

In consideration of which agreement on the part of the Lessee, the Lessor agrees that it will provide the funds as the same may be needed to carry out the provisions of said contract, provided the total sums so to be provided, including all sums paid on account of such contract before the date hereof shall not exceed the aggregate sum of Six Hundred Thousand Dollars. In event the total cost of such work shall exceed such aggregate sum of Six Hundred Thousand Dollars, the Lessee shall provide any such additional funds and the Lessor is expressly relieved from any and all liability

on account thereof as between the parties hereto, except as hereinafter in Article Fifteen hereof provided, and as between the Lessor and any other party whatsoever, the Lessee shall assume all such liability and protect and save harmless the Lessor on account thereof.

It is expressly understood and agreed as between the parties hereto that should the Lessor hereafter sell the real property heretofore referred to as reserved from the operation of this lease, it may use the proceeds of the sale in paying the expense of installing the new coke oven plant in this Article referred to, and if the Lessor shall have paid such expense with other funds, the Lessor may, as against the Lessee, reimburse itself through the proceeds of such sale.

10. It is further covenanted and agreed between the parties that the Lessor as an incident to the practical operation of said leased property hereby assigns to the Lessee all accounts and bills receivable held and possessed by the Lessor, (other than accounts or bills receivable on account of bonds of the Lessor heretofore sold by it) which shall be collected by the Lessee and from the proceeds thereof the Lessee shall pay all accounts and bills payable of the Lessor other than the mortgage bonds hereinabove mentioned and other than any bills or accounts payable representing payments on account of the improvements referred to in Paragraph Nine hereof, paying over to the Lessor any balance which may remain; provided, however, the Lessee shall receive reasonable compensation for the collection of such accounts. The Lessor guarantees the collectibility of said accounts and bills receivable to an amount sufficient to pay all of its accounts payable.

11. It is further covenanted and agreed between the parties that the Lessee shall be permitted to use as its own all coal, coke, oil, gas, meters, pipe, fittings, tools, horses, wagons, automobiles and all supplies and merchandise of any kind on hand belonging to the Lessor. An inventory and appraisal thereof as of the day this lease takes effect shall be made by two appraisers, one selected by each of the parties hereto and two copies thereof shall be signed by the parties hereto and one original copy delivered to each. At the termination of this lease whether by lapse of time, by forfeiture or for any other cause, the Lessee agrees to deliver to the Lessor in good condition, useful and salable supplies and merchandise of a like value or to pay to the Lessor in money the

difference between the value of the property returned and the total value of the inventory.

12. It is further mutually covenanted and agreed that there shall be made as of the day when this lease takes effect a full, complete and particular inventory and description of all the estate and property, real and personal, belonging to the Lessor and coming into the possession of the Lessee by virtue of this lease, other than that covered by the inventory referred to in the last paragraph hereof. Such inventory shall be made by two competent persons, one selected by each party, and such inventory shall be made in duplicate, properly identified and an original furnished to each party. To such inventory there shall be added at the completion of the construction work now under way a complete description thereof, and on the 1st day of February, 1914, and semi-annually thereafter during the continuance of this lease there shall be added to such inventory a complete description of all changes, removals, extensions, additions and betterments made by the Lessee during the preceding six months, thereby furnishing an accurate record of the property covered by this lease, and which the Lessee is by this agreement obligated to preserve, maintain and return.

13. The Lessee hereby covenants and agrees that it will faithfully comply with all the provisions of the franchises from the city of Indianapolis and all obligations imposed upon it by law or by the Public Service Commission or other body having legal authority in the premises, and do all things necessary to preserve its right to do business in the city of Indianapolis. That it will so far as the same may be necessary to that end, secure new franchises from time to time from the city of Indianapolis or other public authorities having power to grant said franchises to do business in the city of Indianapolis. That at or before the termination of the corporate life of the Lessee, the Lessee will so far as it is legally able so to do, either extend its corporate life or cause a new corporation to be formed to which it will transfer all its then property and assets and cause said new company expressly to assume all the obligations of this lease. And the like duty shall be assumed by all successive companies acquiring said property as a part of the consideration for their so acquiring said property as such successors in title. All of which agreements however are expressly subject to the rights now held by the city of Indianapolis under the terms of the franchise granted to the Lessee by said city.

14. The Lessee covenants that it will during the continuance of this lease pay, satisfy and discharge as the same shall accrue all taxes, rates, charges, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description which are now a lien or may be law-
40 fully imposed or assessed during the continuance of this lease in any way upon the Lessor with reference to its capital stock or property, earnings, contracts, rights, privileges or franchises hereby demised, or upon the rental herein reserved, so far as the same may constitute the basis for an income tax and upon all dividends declared during the continuance of this lease upon the capital stock of the Lessor, for which the Lessor as a corporation shall in any manner be liable, and also all sums of money which the Lessor may now be or may hereafter become liable to pay by law, contract or otherwise, for the possession, enjoyment or perpetuation of any of its rights, powers, privileges or franchises; provided, however, from the taxes and assessments thus to be paid there shall be deducted all taxes or assessments against the Lessor on account of the real estate above mentioned which is reserved from the operation of this lease, or on account of any property hereafter acquired by the Lessor which is not a part of the property covered by this lease; said payments to be made as the same become due to the officers or other persons entitled by law to receive the same; and in the event that said Lessee shall fail to make any such payments when the same become due, the Lessor may at any time thereafter make such payments and recover the amount thereof with interest thereon from the date of such payments and all costs, attorney's fees and other expenses from the Lessee, without prejudice to any rights secured to the Lessor by this lease for breach of any covenants hereof; it being understood and agreed, however, that if the Lessee shall desire to resist by legal proceedings, the payment of any tax or assessment, and shall so notify the Lessor, the Lessor shall not pay nor shall the Lessee be obliged to pay any such tax or assessment until thirty days after the final adjudication thereupon by the Court having jurisdiction in such cases, and in the event that the Lessee shall take an appeal from any adjudication upon such tax or assessment, then the Lessor shall not pay nor shall the Lessee be obliged to pay such tax or assessment until thirty days after final adjudication upon such appeal. It is however expressly agreed that the Lessor shall

pay its proportionate part of the taxes for the year 1912 based on the portion of the year 1913 which has expired when this lease goes into effect.

15. The Lessee hereby accepts the gas plants of the Lessor and the estate and property, real and personal, hereby demised as the same actually are at the date hereof, except as herein otherwise provided, and covenants that it will, subject to the provision of existing and future municipal grants, during said term renew, repair, replace and extend the same, so as to maintain and keep the demised premises in as good order, repair and condition as the same are now, or may be put upon the completion of the construction contract hereinabove referred to, and in their present state of efficiency; and so as to comply with all requirements of law or ordinance of any municipality or of the Public Service Commission or other body, that it will from time to time at its own expense (except as otherwise provided in Article Nine hereof) make all extensions, additions, alterations, improvements, renewals and betterments which may be necessary or proper with reference to the premises and property hereby demised and for the use and operation thereof, and will do and perform all other things necessary to make and maintain said gas plants and system as first class, modern and efficient gas plants and system, that all lands, structures, improvements, betterments, extensions and renewals added to or made upon the demised premises, and all rights, privileges and franchises acquired by the Lessee in connection with the demised premises shall immediately become the property of the Lessor and be treated as part of the demised premises and be subject to all the terms, conditions and provisions of this indenture in like manner as if they had been vested in the Lessor at the date of this instrument.

Provided, however, that upon the expiration of the term of this lease, or if before the expiration of the term thereof this lease be terminated for any cause other than the default of the Lessee, then upon such termination, the Lessor shall pay to the Lessee, any sum paid by the Lessee in excess of the funds furnished by the Lessor for the construction of the betterments now under way referred to in Article Nine hereof, and in addition thereto the actual value at the time of such expiration or termination of all then existing additions, betterments, improvements, extensions and renewals made by the Lessee to and of the leased property, which are properly

chargeable to capital account, except such as shall have been made out of the proceeds of the sale of, or insurance on, the property now owned by the Lessor, or shall have
41 been made in the renewal of or substitution for property existing at the commencement of the term of this lease, and thereafter worn out or destroyed; or shall have been paid for out of the proceeds of bonds of the Lessor, as herein provided; but the payment of such value shall be postponed to the lien of the mortgage upon the property of the Lessor hereinbefore mentioned, and of any refunding or renewal mortgages or mortgage executed pursuant to the provisions of Article 27 hereof to the extent that may be necessary for the payment of the bonds secured thereby. Such value shall be ascertained and fixed by the award of arbitrators, to be chosen as provided in Article Twenty-eight hereof, and the award of the arbitrators or the majority of them shall be final and binding upon the parties hereto.

For the purpose of ascertaining at such expiration or termination of this lease what additions the Lessee shall have made which shall then be the subject of valuation as herein provided, copies of the inventory herein provided for by the terms of Article 12 shall be deposited, duly certified by the persons who shall have made the same, with the Lessor and the Lessee, respectively. At the termination of this lease as aforesaid, another inventory shall be made by persons selected in the same way, and a comparison of the two shall be made for the purpose of ascertaining what, if any, additions have been so made and then exist, for the purpose of valuation as aforesaid. But nothing herein shall be construed to be an addition, which is furnished or used by the Lessee in renewal or in place of or in substitution for any of the property hereby leased, saving to the extent that the additions shall at the termination of the lease, possess value in excess of what would then be the value of the matter or thing for which such substitution or renewal was made. Provided, however, any pipe lines of the Lessor which may have been heretofore injured by electrolysis and which may on account thereof be replaced by the Lessee, the cost of such replacement shall not be deemed as a maintenance or repair charge, but as a new extension or betterment for which the Lessee shall be entitled to repayment on the condition at the time and in the manner in this section of the lease provided.

On this further condition, however, the right of the Lessee to thus treat pipe lines heretofore injured by electrolysis shall be limited to such pipe lines as may be replaced by the Lessee on or before July 1st, 1918, and the Lessee shall at the time it replaces any such pipe, notify the Lessor in writing thereof and of its claim that the necessity for such replacement is due to electrolysis, and unless the Lessor shall in writing assent to such claim, then the matter shall be settled by arbitrators selected as hereinafter provided.

It is further expressly understood and agreed however that nothing herein contained shall require the Lessee to make repairs upon and maintain the coal gas plant of the Lessor or to return the same in its present condition, it being the expectation and understanding of the parties that said coal gas plant may be abandoned by the Lessee whenever it shall cease to be necessary or profitable to continue the operation thereof.

16. The Lessee covenants that it will before the expiration of each and every franchise of the Lessor as now held or hereafter secured, take steps to secure and will use all reasonable endeavor in the name of the Lessor to secure an extension or renewal of all such franchises, to the end that there may be at all times during the continuation of this lease present operative franchises in the name of the Lessor wherever it is legally necessary or desirable to have such franchises; and the Lessor will in all reasonable ways cooperate in the securing of such extensions or renewals. But no such franchise shall be procured by the Lessee in the name of the Lessor which is unreasonable or detrimental to the Lessor, and if the Lessor shall object to the terms of any such proposed franchise, the question as to its reasonableness from the standpoint of the Lessor shall be submitted to arbitrators elected as hereinafter provided, and their decision shall be final and conclusive.

In event the Lessor shall at any time during the term of this lease deem it necessary or expedient that a new franchise, license or permit be procured, to do business in the city of Indianapolis or in any part of the territory reached by its system, from the city of Indianapolis, or other municipality, or from the Public Service Commission or other board, agency or officer authorized to grant such franchise, license or permit, it may do so in its own name, and such franchise, license or permit shall thereupon pass under and become a part of the property covered by this lease, and

the Lessee shall do all things necessary to maintain and
42 preserve such franchise, license or permit; provided,
however, the Lessee shall not be required to accept the
benefits of and operate under any such franchise, license or
permit if arbitrators selected as hereinafter provided shall
decide that the same diminishes the rights or increases the
burdens of the Lessee hereunder to an extent materially detri-
mental to its interests.

The right of the Lessor to surrender its existing franchise
and accept in lieu thereof an indeterminate franchise under
the provisions of the "Shively-Spencer Utility Commission
Act" shall not be abridged by the execution of this lease, and
on and after such acceptance of an indeterminate franchise,
or if and when by operation of law the Lessor becomes sub-
ject to such indeterminate franchise or to regulations, terms,
conditions, or other requirements touching the construction,
repair, maintenance and operation of the leased property,
other or different from or additional to those now in force,
the obligations of the Lessee under this lease shall not be af-
fected thereby, but such indeterminate franchise and all the
provisions of any such law or ordinance to be performed and
observed by the Lessor shall be performed and observed on
its behalf by the Lessee.

17. The Lessee covenants to insure and keep insured such
parts of the leased property as are of an insurable nature for
such sums and in such manner as shall reasonably protect the
same against loss or damage by fire and as shall be usual in
like properties and to exhibit to the Lessor or its agents the
policies whenever reasonably requested and to apply all sums
received by virtue of any such insurance to the rebuilding, re-
placement or repair of the property damaged or destroyed,
whenever necessary or desirable in the judgment of the Les-
see for the operation of leased property, or when not so nec-
essary or desirable, then to extensions, betterments and re-
newals of property, subject to this lease, or to the retirement
of the Lessor's bonds as the Lessor and Lessee may mutually
agree.

Provided, however, that the Lessee may adopt such other
plan or method of protection against loss by fire, whether by
the establishment of an insurance fund, or otherwise, as may
be approved by the Board of Directors of the Lessor. It is un-
derstood and agreed, however, that the Lessee will at all times
comply with the insurance clause contained in the existing
mortgage upon the demised property or any renewal thereof

or any refunding mortgage. In case of any failure on the part of the Lessee to keep said property so insured or protected from loss by fire, it shall be lawful for the Lessor to cause said property to be insured, and the Lessor may recover the amount of any payments of premiums for such insurance, with interest thereon from the date thereof, from the Lessee, without prejudice to any rights secured to the Lessor by this lease for breach of any covenant thereof.

It is understood by and between the parties hereto that the provisions thus made for the restoration of the demised property, or any part thereof, which may be destroyed or injured by fire, shall be treated and shall operate as a waiver by the Lessee of any right, whether statutory or otherwise, on its part to surrender said leased property or any part thereof by reason of destruction or injury by fire or otherwise, the object being to require the Lessee, notwithstanding such event to continue the term of this lease and to make the payments and perform the covenants herein required, anything in the statutes of the State of Indiana to the contrary notwithstanding.

18. The Lessor covenants to deliver to the Lessee the property herein demised free of any and liens whatsoever except the bonded indebtedness secured by its mortgage and except taxes not delinquent. The Lessor agrees to indemnify and hold harmless the Lessee against any and all suits now pending and claims now existing or hereafter asserted as the result of any act done by the Lessor, its agents, servants and employes prior to the beginning of the term of this lease.

19. The Lessee covenants at its own cost and expense to operate said gas plants and system and the other leased properties in compliance with the laws of the State of Indiana and in compliance with requirements of franchises, contracts and orders of Public Service Commission or other public authority and to make all returns and do all things that may by law be required in respect to the whole or any part of the leased property or the business conducted thereon, and that it will furnish all equipment and apparatus of every description necessary for the proper use and operation of said gas plant and system and other leased property in accordance with the requirements of this lease.

43 The Lessee further covenants to save the Lessor harmless from the payment of any claim, debt or liability whatsoever growing out of the present construction and condition or of the working, maintaining or operating or future construction of said leased property subsequent to the date of the

beginning of the term of this lease during the term of this lease or growing out of any fault or neglect of the Lessee or its agents or employes or their violation of any law or municipal ordinance, or order or requirement of any commission or other public authority now existing or hereafter lawfully existing, the Lessee taking upon itself the same duties, obligations and liabilities in respect of such leased property and its appendages and appurtenances and the working, maintaining and operating the same as if the Lessee by succession had become the corporate owner thereof.

20. The Lessee further covenants that it will perform all of the grants to the Lessor from or contracts by it with any state, city, town, county or governmental body, in relation to the leased property and not do or omit or suffer to be done or omitted any act or thing which shall be ground for forfeiture of any of the franchises, rights and privileges or easements derived thereunder for the construction and maintenance and operation of gas plants and system or any part thereof, of which the Lessee shall at any time be in possession under this lease, or which shall be a breach of any condition or obligation imposed upon the Lessor by the Mortgage hereinbefore mentioned, or any renewal or refunding mortgage, or mortgage executed subject to the provisions of Article 27 hereof, or by any other contract entered into by the Lessor; and said Lessee shall and will hold the Lessor harmless from all liability, cost or expense arising during the term hereby created for or upon the bonds heretofore or hereafter executed to any city, town or county conditioned for the faithful performance of the obligations of the Lessor under its grant from or contract with any such city, town or county.

21. The Lessee covenants with the Lessor that it will pay as rental for the demised premises and property in gold coin of the United States without relief from valuation or appraisement laws and with attorney's fees.

(1) The interest as the same shall from time to time fall due on the \$4,833,000 of bonded indebtedness of the Lessor now outstanding, being part of the authorized issue of the \$7,500,000 par value of five per cent. fifty year gold bonds, secured by mortgage to the Trust Company of America and Ferdinand Winter, Trustees, dated October 1st, 1902, so long as the said bonds or any of them shall be outstanding; also the interest as it shall from time to time fall due on any bonds which may be issued in refunding, renewing or extending the bonded indebtedness of the Lessor under the provisions of

Article 27 hereof. Also the interest on any escrow bonds under said mortgage which may hereafter be certified and used under the provisions of this lease for betterments and extensions. It being, however, expressly understood that the pro rata proportion of the interest on outstanding bonds from April 1st, 1913, to the beginning of the term of this lease shall be paid by the Lessor.

(2) The Lessee will pay to the Lessor as additional rental for the demised property:

On the 31st day of December, 1913, at the rate of One hundred and twenty thousand dollars (\$120,000), per annum for that portion of the year 1913 during which this lease may be effective, and on the 30th day of June and the 31st day of December thereafter Sixty thousand dollars (\$60,000), Provided that when the maximum price of gas to the general consumer shall be fixed at a sum more than 45 and not more than 50 cents per thousand cubic feet sixty days or more prior to the date when any semi-annual payment of rent shall be due, then such semi-annual payment and all subsequent semi-annual payments until a further reduction in the price of gas as hereinafter provided shall be made, shall be in the sum of \$65,000.00 and provided further that when the maximum price of gas to the general consumer shall be fixed at a sum not more than 45 cents per 1000 cubic feet sixty days or more prior to the date when any semi-annual payment of rent shall be due then such semi-annual payment and all subsequent semi-annual payments during the period that this lease shall be effective shall be in the sum of \$67,500.00.

It is agreed by the parties hereto that the price of gas shall be deemed to have been fixed when so established by voluntary act of the Lessee or by act of the Lessee under orders of the Public Service Commission or the State of Indiana, provided, however, that if said Lessee shall within sixty (60) days
44 appeal from any such order of the Public Service Commission fixing a new rate for gas, the change in the amount of rent herein provided shall not become effective until such appeal has been decided by the last court to which it may be carried by said Lessee; and when any such appeal shall be so decided by the last court to which said Lessee may apply, any change in the amount of rental shall become effective as of the date on which such court shall order the change in the maximum net price of gas to the general consumer to take effect.

All such payments shall be made free and clear of all

charges, taxes, assessments and impositions whatsoever. The sums thus to be paid under Subdivision 2 of this article shall be paid to the Lessor or its nominees as follows: Twenty (20) or more days before any such payment becomes due, the Lessor shall declare a dividend of an amount equal to said payment to the holders of the shares of its capital stock, and the Lessee, as agent of the Lessor, shall pay the amounts of such dividends thus declared to such persons and in such amounts to each as shall be certified to the Lessee under oath by the treasurer of the Lessor at least twenty (20) days before the sum to be paid becomes due and payable, as entitled to receive the same on the day the same becomes due and payable by virtue of their respective holdings of the capital stock of the Lessor. The Lessor, in the interest and for the benefit of the holders of its stock, hereby requests and directs the Lessee thus to pay for the benefit of the Lessor said sums of money, the payment of which are provided for in said Subdivision 2 of this article, directly to the holders of said shares respectively, in such amounts to each as shall be certified to the Lessee under oath by the treasurer of the Lessor at least twenty days before the sums to be paid under said subdivision 2 of this article become due, and to accept the receipts of the persons to whom such payments shall be made in lieu of the receipt of the Lessor therefor (which receipt may consist of the endorsement of the payee on the dividend checks) with the same effect as if such payments had been made to the Lessor and receipted for by it; and the Lessee, in pursuance of said request and direction, hereby agrees that it will make said payment of said sums, the payments of which are provided for in said subdivision 2 of this article, to said shareholders certified to it as aforesaid, in the amounts in each case so certified, it being agreed that said certificates so presented to it from time to time shall exempt it from all liability to inquire or be informed concerning the performance of prerequisite conditions.

It is agreed between the parties hereto that the instructions and agreement last above written for the payment of said sums shall not be varied without the consent in writing of the Lessor and of the holders of three-fourths of said shares of stock of the Lessor.

And the Lessee further agrees that it will, at the request of the Lessor, endorse upon each certificate of stock its said agreement to make said payments to the holders thereof, in pursuance of and according to the terms herein stated.

3. Such sum not exceeding Three Hundred Dollars (\$300) per year as may reimburse the Lessor for its actual and reasonable disbursements made for the purpose of and incidental to the maintenance of its corporate organization.

22. The Lessee covenants to perform and observe all the covenants and agreements of the Lessor, except those as to the payment of the principal of the bonds, contained in its mortgage to the Trust Company of America, dated October 1st, 1902, securing an issue of bonds in the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000) hereinabove referred to, or in any mortgage executed pursuant to the provision of Article Twenty-seven hereof, and that as to the principal of said bonds it will refund or renew the same at maturity as provided in Article Seven hereof; and also all covenants and agreements of the Lessor, except those as to the payment of the principal of the bonds contained in any refunding or renewal or other mortgage executed pursuant to the provisions of Articles Seven and Twenty-seven of this lease.

As between the parties hereto it is agreed that the Lessee may at any time invest its funds in the outstanding bonds of the Lessor, but its acquirement thereof shall not be deemed a cancellation or retirement thereof unless the Lessee expressly elects to have the same cancelled or retired.

23. The Lessee covenants that at the expiration of this lease through lapse of time or otherwise, the Lessee shall surrender to the Lessor the demised property, rights, privileges, franchises, and all improvements, additions and extensions thereto, and all properties, real and personal rights, privileges and franchises acquired by the Lessee hereunder or in pursuance of this instrument, upon payment therefor by the Lessor, in accordance with the provisions of Article Fifteen hereof, except as the same may have been sold, conveyed, altered, changed, abandoned, removed or replaced in accordance with the terms of this instrument; and upon such expiration or termination the Lessee shall permit the Lessor immediately to resume possession of all and singular the demised premises and property and of such additions thereto, and shall thereupon at the request of the Lessor, make, execute and deliver all such deeds, releases or other instruments which the Lessor may reasonably require in order to revest in the Lessor at once the full and complete title thereto.

24. The Lessee covenants that the Lessor, by its agents or representatives may at all proper and reasonable times

enter upon the demised property and estate and inspect the same for the purpose of ascertaining its condition and whether the covenants and agreements of the Lessee herein contained are being substantially complied with.

25. It is expressly agreed and notice is hereby given that the Lessee shall have no right under any circumstances to create liens against the property of the Lessor hereby leased without the consent of the Lessor, and no person claiming by, under or through the Lessee shall have any right to assert any lien against the Lessor's property.

26. It is further understood and agreed by and between the parties hereto that immediately after the date of the beginning of this lease an account shall be taken of all extensions or betterments properly chargeable to capital account made after February 28th, 1913, (other than those embraced under the contract with the Semet Solvay Company above referred to) and that as between the parties hereto the Lessor shall be permitted to draw down escrow bonds of the issue now outstanding hereinbefore referred to on account of such improvements and any others which it has made for which it is entitled to draw down escrow bonds, to an amount which will produce, if sold at 85 per cent. of par, the total cost of such extensions or betterments made since February 28th, 1913, other than those covered by the said Semet Solvay Contract. And such bonds thus drawn shall be the sole property of the Lessor to be used by it as it may see fit, and the interest hereafter falling due thereon shall be a part of the rental to be paid by the Lessee under the first subdivision of Article Twenty-one hereof. But except as herein provided, the Lessor shall not draw down escrow bonds on account of any betterments, extensions or additions made by the Lessor.

27. In event during the term of this lease all escrow bonds of the Lessor secured by the Mortgage dated October 1st, 1902, hereinbefore referred to, shall have been used to defray the expense of making betterments and extensions to the plant and system of the Lessor made by the Lessee under the provisions of this lease, and it thereupon becomes necessary or advisable in order to meet the expense of further extensions and betterments to the plant of the Lessor that additional bonds shall be authorized and issued secured by a mortgage or deed of trust upon the property of the Lessor hereby leased, then the parties hereto mutually

covenant and agree that they will take all steps and do all things necessary to authorize and issue such additional bonds as may be reasonably necessary for such purposes, and the rights and obligations of the parties with reference to any such additional mortgage and the bonds secured thereby shall be similar in all respects to the rights and obligations created by this instrument with reference to the outstanding mortgage dated October 1st, 1902, hereinabove referred to.

The mortgage securing the payment of additional bonds may be executed at or before the maturity of the bonds secured by the mortgage of the Lessor dated October 1st, 1902, and such additional bonds may be included in an entire authorized issue of bonds, part of which may be issued or held in escrow to take up, refund or renew upon the terms and conditions prescribed in Article Seven hereof, the bonds secured by said mortgage of the Lessor dated October 1st, 1902, and all such additional and refunding and renewal bonds may be refunded or renewed, as provided in said Article Seven.

27½. It is further covenanted and agreed by and between the parties hereto as follows, to-wit:

46 (1) That immediately upon the approval of this lease by the Public Service Commission, the said Indianapolis Gas Company shall file with the Clerk of the City of Indianapolis, and shall also file with said Commission a written declaration, legally executed, that it surrenders its license, permit or franchise, and desires to receive by operation of law in lieu thereof, an indeterminate permit as provided in said Shively-Spencer Utility Commission Act; said Indianapolis Gas Company shall also file with said Public Service Commission a certified copy of its written declaration filed with the Clerk of said City of Indianapolis, to which shall be attached a certificate of said Clerk certifying to the date upon which said written declaration was filed in the Office of said Clerk of said City of Indianapolis. Provided, nevertheless, that if the execution of this lease be prevented by judicial action or be set aside as the result of judicial proceedings, then such surrender of the Indianapolis Gas Company of its license, permit or franchise and the acceptance by it of an indeterminate permit shall be set aside and said company be reinstated without prejudice in its license, permit or franchise so surrendered.

(2) That in any subsequent valuation for rate making purposes of the properties owned by the Lessor and the

Lessee herein, or either of them, the value of the plants and equipments upon which the said Indianapolis Gas Company and the said Citizens Gas Company or either of them shall be entitled to earn an income, shall include only property actually used and useful for the convenience of the public, and shall not include the value of any unnecessary duplications of parts of said property or properties, and such value of all of the property owned by the Lessor and the Lessee or either of them shall for rate making purposes be determined exactly the same as if both companies were operating under indeterminate permits as provided in the Shively-Spencer Utility Commission Act.

(3) That in any rate making proceedings hereafter to be determined fixing rates for gas produced, and sold by the said Indianapolis Gas Company, and the Citizens Gas Company or either of them, the amount of stocks and bonds of either of said companies now outstanding shall not be deemed to have been capitalized against the public by the Act of the Public Service Commission of Indiana in approving this lease.

The interest and dividends on the stocks and bonds of either of said companies now outstanding shall not be deemed to be or permitted by the act of the Public Service Commission of Indiana in approving this lease to become fixed charges, the payment of which must be provided for in establishing a just and reasonable rate for the product produced, transmitted, furnished or sold by said Indianapolis Gas Company or said Citizens Gas Company, or either of them.

(4) That the power to regulate the rates at which gas produced, transmitted, furnished or sold by or through the Indianapolis Gas Company shall during the term this lease is in force remain in the Public Service Commission of Indiana, as fully and completely as it is now vested in said commission, and by the approval of this lease said Commission shall not be deemed to have waived its right to determine the rate at which gas so produced, sold or transmitted by or through the said Indianapolis Gas Company shall be sold.

(5) That the said Citizens Gas Company shall hereafter while this lease is in force permit the Public Service Commission of Indiana (or whatever legal commission or authority, that may have conferred upon it powers now conferred upon the Public Service Commission to fix rates for

the service produced or sold by Public Utilities) to fix and determine the rates and charges at which gas produced, transmitted or sold by it through the properties now operated by it or by the Indianapolis Gas Company as fully and completely as if the said Citizens Gas Company had surrendered its license, permit or franchise and received an indeterminate permit as provided in the Shively-Spencer Utility Commission Act.

(6) That the said Citizens Gas Company hereby binds itself, its successors, and assigns to extend the various lines and mains of its plant as set forth in Section 17 of its franchise as amended and in addition thereto, to extend the mains of the combined plants of the Lessor and Lessee to the extent of at least three miles in any one year, such mains to be of adequate size to serve the consumers along such extensions. In addition to such minimum requirements, the

Public Service Commission of Indiana, or any body succeeding to its duties, shall be permitted, upon petition of the proper authorities of the City of Indianapolis, to order additional extensions to a reasonable amount upon proper evidence that such extensions are necessary and will, if made, provide a reasonable return on the cost thereof.

After the Citizens Gas Company shall cease to operate under the franchise from the City of Indianapolis now held by it, said company, its successors and assigns, shall make such extensions to its mains as may be required by the Public Officials having authority in the premises.

(7) The said Citizens Gas Company hereby covenants and agrees to file with the Public Service Commission of Indiana so that the same may be effective on the first day of January 1914, a schedule showing the following rates, tolls and charges for gas transmitted, produced and sold by it, to-wit:

For the first 50,000 cubic feet of gas transmitted, sold or furnished by it to any one consumer in any one month through one meter 55 cents per thousand cubic feet.

45 cents per thousand cubic feet for all in excess of 50,000 cubic feet and not in excess of 100,000 cubic feet furnished to one consumer in any one month through one meter.

40 cents for each 1000 cubic feet of gas in excess of 100,000 cubic feet furnished to one consumer in any one month through one meter.

(8) That the Lessor and the Lessee, each for itself hereby expressly covenants and agrees that this lease shall re-

main in full force and effect so long as each one separately of the conditions hereinabove set forth numbered respectively 1-2-3-4-5-6 and 7, shall be complied with not to exceed a term of 99 years, and the Lessor and the Lessee, each for itself, covenants and agrees with each other and with the Public Service Commission of Indiana, that the violation of any one of said conditions numbered as aforesaid shall, at the option of the Public Service Commission of Indiana forfeit this lease and render the same null and void. Provided, however, before declaring such forfeiture for any such cause or as provided in the habendum clause of this lease such Public Service Commission shall give not less than thirty (30) days' notice of its proposed action to each of the parties hereto, and if within thirty (30) days thereafter the party not in default shall begin action to compel the party in default to do or cease doing the thing on account of which such Public Service Commission proposes declaring such forfeiture and shall diligently prosecute such action to final decision, then the Public Service Commission shall not proceed further in the matter of such forfeiture until the final determination of such action. And if as a result of such action, or prior thereto by the voluntary act of the defaulting party, the default shall be corrected then the Public Service Commission shall not be authorized to forfeit this lease.

(9) The approval of this lease by the Public Service Commission of Indiana shall not be deemed in any wise to authorize the issuance of any bonds by either the Lessor or Lessee or any of the purposes specified by the terms of this lease, without the consent of such Public Service Commission to such issuance being obtained from time to time as is now or may hereafter be by law provided.

(10) That the execution of this lease by the Lessor and the Lessee as herein provided shall be conclusively presumed to be an acceptance by the Lessor and Lessee of each one separately of the conditions and terms herein set forth.

28. If any difference shall arise between the parties hereto relative to the construction of this lease or the performance of any of the covenants hereof, and in all cases in which the appointment of arbitrators is provided for herein, such arbitrators shall be selected as follows:

(a) The parties in the first instance may by agreement submit any difference calling for arbitration to one or more arbitrators to be agreed upon, or

(b) Failing to agree upon an arbitrator or arbitrators,

and within ten days after such failure to agree, either party hereto may make written application to any judge of the Superior or Circuit Court of Marion County, Indiana, willing to act for the appointment of three disinterested persons who shall be competent experts concerning the matter in dispute to whom shall be committed the final decision of the point or points in controversy by a majority vote. Said arbitrators, before entering upon their duties, shall take
48 an oath that they have no interest of any kind in either company and that they will faithfully and honestly discharge the duties committed to them. Or the parties hereto may by mutual consent refer any such matter for adjustment to the Public Utilities Commission of the State of Indiana.

29. The Lessor and Lessee mutually covenant that they will each look for the carrying out of the obligations of this lease solely to the corporate assets and franchises of the other, and such assets shall not embrace any claim which might under any circumstances be enforceable in any way whatsoever against a stockholder, director or officer, under any statute or other law now or hereafter in force, or against a stockholder by reason of any insufficiency in the payment of capital stock. Any personal, statutory or other liability of any stockholder, director or officer of either the Lessor or the Lessee, whether such liability now exists or hereafter arise, being a part consideration for this lease is hereby expressly waived.

30. This lease is made upon the condition that whenever and as often as the Lessee shall make default in the payment of any sum required to be paid by it under this lease, or shall fail to perform or observe any other covenant or condition contained herein to be kept or performed by the Lessee, and such default shall continue for the period of sixty (60) days after written notice and demand by the Lessor, the Lessor shall have the right at its option by and under the award of arbitrators, as herein provided, and without arbitration in case of the failure to pay any installment of rent or of interest upon bonded indebtedness of the Lessor, as hereinabove provided, to terminate this lease and to re-enter upon and take possession of all the leasehold property, franchises, rights and privileges hereby lease and demised, together with all the additions, extensions and improvements, made thereto, and franchises acquired in connection therewith, by the Lessee as contemplated herein, and the same shall own, hold and possess as of its former estate.

The arbitrators herein referred to shall be appointed as in Article Twenty-eight herein provided, and if they or a majority of them shall find that the Lessor is entitled hereunder to terminate this lease and re-enter as aforesaid, they shall so notify the Lessee in writing, and if thirty (30) days thereafter the Lessee shall still be in default in the payment of any sum (except as to any installment of rent or of interest upon bonded indebtedness of the Lessor as to which defaults there is to be no arbitration) or in the performance of any covenants or conditions of this lease, then upon the expiration of such period of thirty days this lease shall terminate without further notice, and the Lessor shall thereupon be entitled, without any proceedings whatever at law or in equity, to re-enter as aforesaid and to expel the Lessee and all persons claiming under it as aforesaid from the property hereby demised and every part thereof, without prejudice to its rights of action for arrears of rent or any breach of covenant. And provided also that if the Lessee shall desire to resist by legal proceedings the payment of any tax or assessment, as herein provided in Article Fourteen, failure to pay the same pending the adjudication thereof shall not be construed as a default, or a subject of arbitration between the parties. Such arbitrators shall also, in the event of a termination of this lease as aforesaid, adjust, settle and determine all damages, claims and demands between the parties hereto growing out of the termination of this lease, and all other matters of difference between the respective parties hereto, and any award so made by said arbitrators shall be conclusive and binding upon the said parties.

31. The failure or omission of the Lessor to enforce a forfeiture of this lease and re-enter upon the demised premises for default of performance by the Lessee of any of the obligations thereunder to be performed by the Lessee shall not be deemed a waiver of the right to forfeit and re-enter for any other or subsequent default.

32. In the event that any of the agreements in this lease contained, not substantially affecting the rentals to be paid, or the maintenance and operation of the leased property, or other matter going to the essence of the contract, shall be by a court of final jurisdiction adjudged *ultra vires* and void, the validity of this agreement in other respects shall not be affected by such nullity.

In event it should be determined by a court of final juris-

diction that the contract is ultra vires or void because of the length of the term created, and that such term is in excess of the authority of either party hereto to contract, then this lease shall nevertheless be binding upon the parties hereto for the longest term for which the parties hereto might lawfully contract.

In Witness Whereof, the Lessor, The Indianapolis Gas Company, and the Lessee, Citizens Gas Company of Indianapolis, have caused this instrument to be executed in duplicate by their respective Presidents and the due execution thereof to be attested by their respective Secretaries and by their corporate seals hereto affixed, this 30th day of September, 1913.

The Indianapolis Gas Company,
(Seal) By (Signed) Volney T. Malott,
President.

Attest:
(Signed) William M. Stevenson,
Secretary.
Citizens Gas Company of Indianapolis,
(Seal) By (Signed) Franklin Vonnegut,
President.

Attest:
(Signed) J. D. Forrest,
Secretary.

State of Indiana, }
Marion County. } ss.

Before me, the undersigned, a Notary Public in and for said County and State, this 30th day of September, 1913, personally appeared Volney T. Malott, President of The Indianapolis Gas Company, and Franklin Vonnegut, President of the Citizens Gas Company of Indianapolis, and each for and on behalf of the Company of which he is President acknowledged the execution of the foregoing lease.

Witness my hand and Notarial Seal.

(Signed) Margaret Wells,
(Seal) *Notary Public.*

My commission expires November 4, 1916.

50

Exhibit C.

Franchises, Articles of Incorporation
and By-Laws of
Citizens Gas Company of Indianapolis.

51

Franchise of Citizens Gas Company
of Indianapolis.

An Ordinance ratifying, confirming and approving a certain contract and agreement made and entered into on the 25th day of August, 1905, between the city of Indianapolis, by and through its board of public works, and Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, viz.:

[Approved August 30, 1905.]

Contract.—Capital Stock.—Earnings.—Mortgages.—Trustees. 1. This contract and agreement made and entered into by and between the city of Indianapolis, Marion County, Indiana, by and through its board of public works, party of the first part, hereinafter designated as the "City," and Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, for themselves and their associates and assigns, of the city of Indianapolis, Marion county, Indiana, and hereinafter designated as parties of the second part, witnesseth:

Whereas, The said Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, parties of the second part, for themselves, associates and assigns, have presented their written petition to the said board of public works of said city of Indianapolis asking permission to enter upon and lay, construct, maintain and operate a system of pipes in and along the streets and alleys and other places of said city for the distribution and sale of gas to such city and to such of the inhabitants thereof as desire to be supplied therewith;

Now, Therefore, The said city of Indianapolis, party of the first part, by and through its board of public works aforesaid, in consideration of the several agreements of the said Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, parties of the second part, and their associates and assigns hereinafter stipulated and set forth, does hereby grant, authorize, empower and permit the said parties of the second part, their associates and assigns, subject to the ratification and approval of the common council of said city, to enter upon the streets,

alleys, avenues and other public places and parts of said city and to excavate and construct the necessary ditches, trenches, conduits and tunnels and to place, lay, bury, maintain, operate and repair a system of pipes therein of such size as the parties of the second part and their associates and assigns may require for the distribution and supply of gas to said city, and the inhabitants thereof, for fuel and heating and lighting purposes, together with the right to construct, maintain and repair all necessary regulations, valves, curb boxes and safety appliances and other appurtenances, subject to the following conditions, to-wit:

1. Provided, However, That said Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, their associates and assigns, before exercising any of the rights herein conferred, shall organize a corporation under and in accordance with the laws of Indiana to carry out the purpose of this grant, to which corporation this franchise and all interests thereunder shall be assigned which articles of incorporation shall, among other matters, provide as follows:

(a) The Capital stock shall be not less than one million (\$1,000,000.00) dollars, to be divided into shares of twenty-five (\$25.00) dollars each.

(b) No increase of capital stock shall be made except it be provided that such new stock shall be submitted to the public at public auction upon thirty days' notice of the time and place of sale to be published in three Indianapolis newspapers having the largest city circulation, at which time said stock shall be sold at the best price obtainable therefor and any premium offered and paid for such stock shall go to the surplus capital of said company and shall bear no dividend.

(c) The said company by its board of directors shall make and publish in at least two Indianapolis newspapers of general circulation, a semi-annual public statement in detail of the affairs of said company, including the accounts of its assets and liabilities, disbursements and receipts; and the controller of said city shall have the right to investigate the books of said company at any time for the purpose of examining into the correctness of said report, or for other purpose; and the city civil engineer shall have the right at any time to make examination of said company's plant and property.

(d) The entire capital stock of the corporation shall be placed under the control of a board of five (5) trustees
52 and their successors, who shall be stockholders in said company, who shall be designated in said articles of incor-

poration and one of whom shall be nominated by the mayor of said city; which said board of trustees shall have full, complete, exclusive and irrevocable power, during the continuance of this corporation, to hold said stock and vote the same as fully and completely as if they were the owners of said capital stock; to elect directors, as herein provided, and to fill any vacancy that may occur in said board of directors. Said entire capital stock shall be voted as a unit; and in case said trustees shall not agree as to how said stock shall be voted, the majority of them shall cast the vote of the board. If a vacancy shall occur in said board of trustees by death, resignation, removal from the city of Indianapolis, or otherwise, such vacancy shall be filled by the remaining members of the board, except that the mayor of said city shall appoint the successor to the trustee originally named by such mayor; and in the event of the failure of said board or mayor to fill such vacancy, the Marion circuit court shall, upon application of any stockholder, after said trustees or mayor have had ten (10) days' notice in writing of said application, and shall have in the meantime failed to fill such vacancy, appoint some competent person to fill the same.

Any member of the board of trustee may be removed by the Marion circuit court upon the showing that said trustee is an employe or holder of any of the securities or capital stock of any other company organized for the purpose of manufacturing or delivering gas to consumers residing in, or in the vicinity of the city of Indianapolis, or for any corrupt practice or any misconduct which said court may deem detrimental to the interests of said company. Removal from the city of Indianapolis shall, ipso facto, vacate the office of any trustee.

(e) Said trustees shall issue to each subscriber to the capital stock of said company, upon full payment by such subscriber to said company of the amount of his subscription, and upon the stock therefor being issued to said trustees as above provided, a certificate showing the amount of stock held by said trustees in trust for said subscriber; and said subscriber or holder of said certificate by assignment, shall be entitled by virtue thereof to receive from said company all dividends which shall be declared, not, however, exceeding ten per centum per annum, payable semi-annually in money or in payment of any indebtedness of the holders of such certificates as consumers of the gas of said company, so long as said certificates remain outstanding and uncanceled as hereinafter provided.

(f) The earnings of said company shall be used in the following order, to-wit; first, to the payment of matured debts and operating expenses; second, to the payment semi-annually of said dividends of ten per centum per annum and any unpaid accrued dividends; third, to such extensions and betterments as may be ordered by the board of public works of said city; and the excess to the payment in whole or partial payments of the amounts subscribed: Provided, however, That when any part of the amount subscribed and paid in by any certificate holder has been repaid only the balance unpaid shall thereafter be entitled to receive such dividend of ten per centum per annum.

(g) When said certificate-holder shall have received, by dividends or otherwise, upon said certificates an amount equal to the face value thereof together with interest thereon at the rate of ten per centum per annum payable semi-annually, then said certificates issued to said subscribers shall be deemed fully paid and cancelled and it shall be the duty of the trustees and directors of said company to convey said gas plant and property belonging to said company to said city, to be owned and operated or leased by it, and all the rights, title and interest of said company or its certificateholders, stockholders, officers, directors or trustees, shall be deemed to be fully paid and extinguished, and all such certificates, whether of stock or otherwise, shall be surrendered and cancelled and said corporation shall be wound up.

(h) The business and prudential concerns of the corporation shall be managed by a board of directors consisting of nine (9) members, to be after the first year, annually elected by the board of trustees, and said annual election shall be held on the second Monday of January of each year thereafter.

(i) If upon the expiration of the term and period of the franchise granted by said city of Indianapolis to said parties and assigned to said company, the same shall terminate
53 without the payment of said certificates, together with dividends thereon, at the rate of ten per centum per annum, then upon notice to such effect to be given said board of directors by the board of public works of said city at least six months before the expiration of said franchise period, the said board of directors shall mortgage its gas plant and property for such sum as to enable it to pay its stock or certificate-holders an amount which with what has already been paid will equal the full amount of such subscription with divi-

dends estimated at the rate of ten per centum per annum thereon, and with the proceeds thereof, or with the mortgage notes so issued in proper amounts, pay off and discharge the amounts due such certificate-holders and convey said plant to said city subject to such obligations and other legal obligations against said company: Provided, however, That by the terms of said mortgage such obligation shall bear interest not exceeding six per centum per annum and be payable on or before ten years from date of execution.

City Bound by Contract. 2. And it is agreed and understood that all of the above stipulations to be provided in the articles of incorporation of the company to be formed by said Potts, Stalnaker and Schmidt, and their associates shall bind and be enforceable by said city against said company as conditions of this contract.

Purchase of Consumers' Gas Trust Co.'s Mains. 3. And provided further that this grant is made upon the following additional conditions, to-wit: That said Potts, Stalnaker and Schmidt, their associates and assigns, shall secure, acquire or construct, and put in operation a fuel gas plant for the purpose of supplying gas under this franchise, with not less than one hundred miles of mains in the streets and alleys of said city, within eighteen months from the date of the sale of the Consumers' Gas Trust Company mains now pending, and failing therein, shall forfeit all rights hereunder: Provided, however, the board of public works may at any time after said sale of the Consumers' Gas Trust Company's mains now pending, by written notice require said second parties, their associates and assigns, to file a bond within thirty days in the sum of twenty five thousand (\$25,000) dollars with surety to the approval of said board, conditioned for the faithful performance of this contract and the acquiring or construction and putting in operation of such fuel gas plant with at least one hundred miles of mains laid in the streets and alleys of said city and upon failure of said second parties, their associates and assigns to comply with said notice and order for the filing of such bond, this franchise contract shall become void and all the rights, privileges and interest granted or arising hereunder to said second parties, their associates and assigns, shall at once become void and of no effect, and provided further that said board of public works may, in its discretion, extend the time above fixed for the construction of such plant to a date not more than six months after the expiration of the date as above provided.

Bond of Indemnity. 4. Before said parties of the second part or their assigns shall enter upon or take possession of any street, alley, avenue or other public place within said city for said purposes aforesaid, they or their assigns shall execute to said city of Indianapolis a good and sufficient bond to be maintained throughout the term of this franchise, in the sum of twenty-five thousand (\$25,000) dollars, with surety to the approval of said board of public works, and conditioned for the indemnification of said city against all loss by reason of damages sustained by any person, firm or corporation by reason of the construction or operation of said gas plant by the said parties of the second part, or their assigns, and for the faithful performance by said parties of the second part and their assigns of each and every stipulation and agreement contained in this contract.

Protecting City. 5. Said second parties for themselves and their assigns agree to indemnify and hold harmless said city, its officers and employes from the payment of any and all damages, costs, expenses, royalties, patent fees, attorney's fees or any other sum of money whatsoever by reason of any action or demand for any infringement of any patent or copyright, or by reason of any demand or suit against said city on account of any act of omission or commission by said second parties or their assigns; and upon written notice said second parties or their assigns shall defend any suit against said city on account of any such matter, and shall prosecute or defend any appeal therein and promptly pay any final judgment that may be recovered therein against said city.

54 Diagram of Streets to be Occupied. 6. Before entering upon or commencing operations in any streets, alleys, or public ground of said city, said parties of the second part, or their assigns, shall furnish to the board of public works of said city a plan showing the street, alley, avenue or other place to be opened and the proposed location of the pipes therein, with a general specification giving particulars as to the kind and size of pipes to be used. Duplicate plans shall be submitted to and approved by the city civil engineer before any street is opened for any purpose whatever, and one copy of said plan shall be retained by said city. Said parties of the second part, or their assigns, shall also file in the office of the board of public works within sixty (60) days after laying the mains in any street, alley or public place a full and complete map showing the position and size of the pipes therein.

Permit to Work in Streets. 7. All work done in or upon any of the streets, alleys or public places of said city, either in the original construction or in making repairs, shall be done upon permits issued by the board of public works, and all trenches shall be dug and pipes laid and the trenches or ditches closed within the shortest possible time within which the same can be done with skillfulness and dispatch. All work shall be done so as to interfere as little as possible with public use and travel upon said streets, alleys and public ground, and the said parties of the second part and their assigns shall restore and maintain the streets and other places in their original condition and shall clear the streets and other places occupied by the parties of the second part and assigns of dirt and rubbish.

Supervision of Inspectors. 8. In the construction or repair of that part of such plant as is located in any of the streets, alleys, avenues or public places of said city, the same shall be subject to the supervision of inspectors to be appointed by the board of public works, and all necessary expenses for the employment of such inspectors which may be necessary for such purposes, shall be paid by the said parties of the second part or their assigns to the city controller on demand.

Service Pipes. 9. All service pipes connecting with said mains of the parties of the second part or their assigns, shall be placed and located at such points and locations as shall meet the approval of the owner of the property whose premises are to be connected by such service pipes and service lines to property line of streets and alleys. Provided, however, that where service pipes are already laid in connection with a system of mains secured by second parties or their assigns, no relocation of such service pipes shall be required. Said service pipes to property lines and curb boxes shall be put in at the expense of said parties of the second part and their assigns, who shall also furnish all necessary meters and safety devices free of charge to each consumer of gas. Provided, however, That the parties of the second part and their assigns shall be entitled to require a deposit of not to exceed five dollars with each meter furnished, which deposit shall be held and returned to such consumer upon the surrender by him of such meter in good condition, the same as when originally installed, natural wear excepted.

Mains. 10. All mains shall be laid with reference to the present grade of the street, alley or public ground through

which the mains shall be placed, and in case the grade of such streets, alleys or public places shall be changed the parties of the second part and their assigns shall cause such pipes to be relaid in conformity to such changed grade at their expense and the parties of the second part or assigns shall not be entitled to damages by reason of such change of grade.

Materials, Quality. 11. All materials used in the equipment or construction of said plant shall be of the best quality and the mains of said company shall at all times be of sufficient size to render adequate service. All pipes shall be so laid and located as not to interfere with the city's sewers, water or other pipes, or those of any other person or company, and when the city shall determine to lay any sewer, water or other pipe in any street, alley or public ground occupied by the pipes of the parties of the second part, or their assigns, or change the location of any such pipe, the parties of the second part or their assigns, shall, at their own expense, lower, elevate, change or remove their pipes so as not to interfere with the use of sewer or water pipes.

Complying With Ordinances—Mains. 12. In the construction, maintenance and repair of any of said pipes of said parties of the second part or assigns, they shall comply 55 with all ordinances and regulations existing, or that may hereafter be passed by the common council of said city of Indianapolis, or resolutions or regulations made by the board of public works applicable to the parties of the second part or their assigns, concerning the manner of laying, constructing or repairing mains and connections of said plant, and they shall also be liable for any damages by reason of their failure to comply with any of said regulations, resolutions or ordinances, and shall save the city harmless from any and all damages by reason of said neglect.

Quality of Gas. 13. The parties of the second part, for themselves and their assigns, further agree that the gas so to be furnished, sold and distributed shall have at least six hundred (600) British thermal units per cubic foot, measured according to standard methods employed for such purposes.

Price of Gas. 14. The parties of the second part and assigns further agree that the price to be charged the consumer for gas so to be furnished under this contract shall never at any time exceed the sum of sixty (60) cents per thousand cubic feet, and in the event said parties of the second part or their assigns shall ever increase its rates for gas in excess of sixty (60) cents per one thousand (1,000) cubic feet,

aforesaid, for gas furnished under the terms of this contract, then and in that event all the rights, privileges and franchises herein granted shall at once become null and void and its right to longer occupy or use any of the streets, alleys, avenues, public places or other parts of said city may be terminated, and the city shall have the right to acquire said plant as herein provided as upon the termination of the franchise period.

Refilling Excavations. 15. In the event the parties of the second part, or assigns, should fail to refill any excavation made in the construction or repair of any portion of said plant, or fail to restore any street, alley or public ground to its former condition, the said city of Indianapolis, through its board of public works, may, after five (5) days' written notice to the parties of the second part or assigns, at their office in said city, do such work and make repairs as may be necessary and the cost thereof shall be paid to the controller of said city by said second parties, or assigns within ten (10) days from the date upon which itemized bills are presented therefor.

Emergency Fund—Repairs. 16. Before said parties of the second part or assigns shall commence the work of construction, they or their assigns shall deposit with the city treasurer of said city to the credit of said board of public works the sum of five hundred (\$500.00) dollars, and shall so maintain said sum on deposit during the entire life of this contract or franchise, which shall be designated as an "emergency fund." Whenever, in the opinion of the board of public works, an emergency arises in any part of any street, alley or public ground, which has been caused by the parties of the second part or assigns, and they shall fail, on notice, to immediately repair the same, the said board of public works may cause such repairs to be made at once, and if the cost thereof be not promptly paid by the parties of the second part or assigns on presentation of itemized bill therefor, such cost shall be paid from such emergency fund, which fund shall be immediately reimbursed by said parties of the second part or assigns; or said board of public works may deduct an amount equal to any payment made by it out of any sum due said parties of the second part or assigns and may add the same to such emergency fund.

Extension of Lines—Forfeiture. 17. The parties of the second part hereby bind themselves, their successors and assigns, to so extend the various lines and mains of said plant that all the inhabitants of said city may be supplied with gas

for fuel and lighting purposes, when they may reasonably require the same and when a petition therefor has been presented to the board of public works signed by the owners of property in any territory in said city asking for such extension, and in which said owners or occupants of at least three houses already erected shall bind themselves to make five or more stove or grate connections or fifteen or more burners and to use the same for each five hundred (500) feet of space that said lines are asked to be extended. Whenever such petition has been filed with the said board of public works it shall cause written notice to be given to the parties of the second part, their successors or assigns, which may be served on any officer or employe of said parties of the second part or assigns, at the main indianapolis office of said parties or assigns, requiring said parties of the second part or assigns to appear before said board of public works

56 at a certain hour specified in said notice in not less than five days after the serving of such notice, to show cause why the prayer of said petitioners should not be granted. Such notice shall contain an accurate description of the streets, alleys and public places through and along which such extension is asked and the territory and inhabitants of which it is proposed to supply with gas as aforesaid. On the day and at the time named in such notice the board of public works shall give to the parties of the second part or assigns, if they so desire, a full hearing on the question as to whether such petition has been signed by the required number of owners and occupants of property who have agreed therein to take and use the number of stoves or grate connections or burners, and whether such extension should be required; if said parties of the second part or assigns should not appear before said board of public works at the time fixed in said notice, said board of public works may act upon such petition and upon such evidence or information as it may have from any source. If said board of public works, after such hearing, shall decide that said petition has been signed as hereinbefore provided and contains the agreement as to burners or stove connections herein required, and that such extension may reasonably be required, it may make an order requiring such extension and fixing the time within which said work of extension shall be completed, reasonable time being given, written notice of which shall be given the parties of the second part, or assigns, and if the parties of the second part or assigns should fail or refuse to make such extension within the time limited,

unavoidable delays excepted, the parties of the second part or assigns shall forfeit and pay to said city the sum of fifty (\$50.00) dollars for each and every day that the completion of such extension is delayed beyond the period so fixed, which sum shall be considered as liquidated damages for breach of this contract; provided, however, that said parties of the second part or assigns shall not be required to proceed with the extension of any lines, pipes or mains between the first day of November and the first day of April of the following year, in any year, and provided further that such extension shall not be required by said board of public works of said city unless the earnings of said company will permit the same after the payment of the dividend of ten per centum per annum, upon the subscribers' certificates; and provided further, that after three years from the date of this ordinance such extensions may be required by said board of public works of said city to an extent not exceeding in the aggregate in any one year ten thousand feet of mains of adequate size to serve the consumers along such extension, without regard to the previous payment of the dividend of ten per centum per annum upon the subscribers' certificates.

Agreement to Take Gas—Extension of Lines—Forfeiture. 18. If it shall appear that the extension petitioned for can not be made by said board of public works in the manners heretofore provided in the foregoing section, then such extension may be required of said company upon the following terms and conditions, to-wit: The property owners of any territory in said city not supplied with gas by said company may petition the board of public works of the city for such extension, and shall therewith file their agreement to take at par for cash an amount of the capital stock of said company sufficient to cover the cost of the material and labor of making such extension, together with agreement of property owners or occupants of at least three houses already erected along such proposed lines binding themselves to take at least five stove connections, or fifteen burners, and use the same, for each five hundred feet that said mains are asked to be extended. Said board of public works of said city shall thereupon fix a day for the hearing of said petition, giving said company at least ten days' notice in writing and shall hear all parties interested therein and shall determine by an order, from which there shall be on appeal, if said petition is properly signed by the required number of property owners who have agreed to take the stove connections or burners, and use the same

as above provided and to determine also if said petitioners have sufficiently subscribed therefor and are responsible under their obligation to take an amount of the capital stock of said company which at its face value would cover the cost of material and labor of making such extension together with service connections to the property lines, such cost to be determined by an estimate of the city civil engineer, and in such order said board of public works shall require said company to make such extensions on said conditions and fix the time within which the work shall be completed. And it shall be the duty of the board of directors of said company, upon such order of the board of public works, to offer for sale as
57 herein provided any of the subscribed capital stock, or if necessary, to increase the capital stock, and so offer for sale such increase to an amount sufficient to cover the estimated cost of such extension; and if said stock be not sold at more than the face value thereof, then the same shall be taken and paid for by said petitioners at the face value thereof and thereupon such extensions shall be made. And if said company shall fail or refuse to make such extension within the time fixed therefor, unavoidable delays excepted, it shall forfeit and pay to said city fifty (\$50.00) dollars for each and every day of such failure or delay.

Meter. 19. The parties of the second part, or assigns, shall use no meter, nor require the use of any meter in the measurement of gas sold under the provision of this contract, except such as will accurately measure all gas passing through it, and it is agreed that any meters whose measurement shall exceed two per cent (2 per cent.) fast or two per cent. slow, will be considered inaccurate.

Test of Meters—Forfeiture on Failure to Furnish Gas. 20. Said board of public works shall at all times have authority to inspect or cause to be inspected and to test or cause to be tested any meters in use by the parties of the second part or assigns, or to inspect and test the apparatus, mains or plant of said company, and to test or cause to be tested the quality of the gas and the calorific and illuminating value of the same for the purpose of determining whether the same does comply with the terms and provisions hereof. And [any] unsafe apparatus or imperfect meters shall immediately be replaced upon order of said board of public works. And upon order of said board of public works the gas of said company shall be made to conform to the standard herein fixed, and if said company shall fail to make its gas of the standard

and quality herein fixed within a period of five days after such order, it shall forfeit to said city the sum of one hundred (\$100.00) dollars for each day's failure to comply with such order, and in addition to the above penalty the city shall have the right by any proper action at law or equity, to compel said company to furnish gas of the quality herein prescribed.

Term of Franchise. 21. This contract and agreement shall be in force from and after the date of its ratification by the common council of said city and for a period of twenty-five years thereafter, and thereafter all rights of said company to occupy the streets and alleys of said city shall terminate and cease.

Property Becomes City's 22. If the plant and system of mains of said company shall not have become the property of said city by the cancellation of the certificates of subscribers and conveyance of such property to such city by the board of directors and trustees of said company on or before the expiration of the aforesaid period of said franchise, then said city, by and through its board of public works, upon the expiration of said franchise period, shall have the right to pay any balance remaining due said certificate holders and the plant and property of said company shall be conveyed to said city as above provided to be owned and operated, or owned and leased by it; or, at the option of said city, the board of directors of the corporate successor of the second parties shall, as hertofore provided, upon the conclusion of said franchise period, mortgage its plant and with the proceeds thereof, or with the mortgage notes issued in proper amounts, pay off and discharge the amount due certificate holders, and thereupon convey said plant to said city subject to such obligations and other legal obligations against said company.

Insolvency of Company. 23. If at any time the company operating under this franchise should become insolvent and be ordered sold by any proper judicial authority, the city of Indianapolis reserves the right to acquire all the property and rights of said company by the payment of its bona fide indebtedness and any balance due the certificate or stockholders of said company, and upon the tender by said city of the amount of such indebtedness and amount due certificate or stockholders the trustees and directors of said company shall upon demand execute proper instruments trans-

ferring all such property and rights to said city of Indianapolis to be owned and operated or leased by it.

Assignment of Contract. 24. This contract shall not be assigned nor in any manner transferred, whether directly or indirectly, except as herein provided by second parties to the corporation to be organized by them, without the consent of the board of public works, and approved [approval] of the common council of said city.

58 In Witness Whereof, The said city of Indianapolis has caused its corporate name to be hereunto affixed by its board of public works and the said Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt have hereunto set their hands, all in triplicate, this 25th day of August, A. D., 1905.

City of Indianapolis,

By M. A. Downing,

Jacob Woessner,

David Wallace,

Board of Public Works,

Party of the first part.

Approved:

John W. Holtzman, *Mayor.*

Alfred F. Potts,

Frank D. Stalnaker,

Lorenz Schmidt,

Party of the second part.

And Whereas, Said contract and agreement has been submitted through the board of public works to the common council of the city of Indianapolis for its action thereon, therefore,

Ordinance Ratifying Contract. Section 1. Be it ordained by the common council of the city of Indianapolis, That the foregoing contract and agreement made and entered into on the 25th day of August, 1905, by the city of Indianapolis, by and through its board of public works, and Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, be and the same is, hereby in all things ratified, confirmed and approved.

Assignment of Franchise.

Whereas, The city of Indianapolis, by and through its Board of Public Works, did, on August 25, 1905, grant the undersigned Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt a certain franchise, which franchise was duly ap-

proved by the Mayor of said city and ratified by the Common Council thereof; and

Whereas, the said grant was made to the undersigned upon the condition that a corporation should be organized under the laws of Indiana to which said franchise should be assigned; and

Whereas, The Citizens Gas Company of Indianapolis, a corporation, has been incorporated under the laws of said State in accordance with the terms of said franchise, and for the purpose of furnishing gas to said city and its inhabitants under the same;

Now, Therefore, we, the undersigned, hereby assign, transfer and set over to the Citizens Gas Company of Indianapolis said franchise and, all and singular, the right, title and interest of the undersigned, in, to, and under said franchise this the 24th day of May, 1906.

Alfred F. Potts,
Frank D. Stalnaker,
Lorenz Schmidt.

Articles of Incorporation of
The Citizens Gas Company
of Indianapolis

The undersigned, desiring to incorporate themselves under the laws of Indiana, adopt the following certificate and articles of incorporation:

I.

The name of the corporation shall be "Citizens Gas Company of Indianapolis."

II.

The principal place of business of said company shall be located in Indianapolis, Indiana.

III.

The object of the promotion of this company shall be to supply the city of Indianapolis and its inhabitants with light, heat and power.

IV.

The amount of capital stock of the company shall be one million (\$1,000,000.00) dollars, to be divided into shares of twenty-five (\$25.00) dollars each. The capital stock of 59 said company may be increased as by law provided, but whenever the capital stock shall be increased such new stock in excess of said one million dollars shall be submitted to the public at public auction upon thirty days' notice of the time and place of sale, to be published in three Indianapolis newspapers having the largest city circulation, at which time said stock shall be sold at the best price obtainable therefor, and any premiums offered and paid for such stock shall go to the surplus capital of said company and shall bear no dividend.

V.

The said company by its Board of Directors shall make and publish in at least two Indianapolis newspapers of general circulation a semi-annual public statement in detail of the affairs of said company, including the accounts of its assets and liabilities, disbursements and receipts, and the controller of said city shall have the right to investigate the books of said company at any time for the purpose of examining into the correctness of said report, or for other purposes; and the city civil engineer shall have the right at any time to make examination of said company's plant and property.

VI.

The entire capital stock of the corporation shall be placed under the control of a board of five (5) trustees and their successors, who shall be stockholders in said company, who shall be designated in said articles of incorporation and one of whom shall be nominated by the mayor of said city, which said Board of Trustees shall have full, complete, exclusive and irrevocable power, during the continuance of this corporation, to hold said stock and vote the same as fully and completely as if they were the owners of said capital stock; to elect directors, as herein provided, and to fill any vacancy that may occur in said Board of Directors. Said entire capital stock shall be voted as a unit; and in case said trustees

shall not agree as to how said stock shall be voted, the majority of them shall cast the vote of the board. If a vacancy shall occur in said Board of Trustees by death, resignation, removal from the city of Indianapolis, or otherwise, such vacancy shall be filled by the remaining members of the board, except that the mayor of said city shall appoint the successor to the trustee originally named by such mayor; and in the event of the failure of such board or mayor to fill such vacancy, the Marion Circuit Court shall, upon application of any stockholder, after said trustees or mayor have had ten (10) days' notice in writing of said application, and shall have in the meantime failed to fill such vacancy, appoint some competent person to fill the same.

VII.

Any member of the Board of Trustees may be removed by the Marion Circuit Court upon the showing that said trustee is an employee or holder of any of the securities or capital stock of any other company organized for the purpose of manufacturing or delivering gas to consumers residing in, or in the vicinity of the city of Indianapolis, or for any corrupt practice or any misconduct which said court may deem detrimental to the interests of said company. Removal from the city of Indianapolis shall ipso facto, vacate the office of any trustee.

VIII.

Said trustees shall issue to each subscriber to the capital stock of said company, upon full payment by such subscriber to said company of the amount of his subscription, and upon the stock therefor being issued to said trustees as above provided, a certificate showing the amount of stock held by said trustees in trust for said subscriber; and said subscriber, or holder of said certificate by assignment, shall be entitled by virtue thereof to receive from said company all dividends which shall be declared, not however, exceeding ten per centum per annum, payable semi-annually in money or in payment of any indebtedness of the holders of such certificates as consumers of the gas of said company, so long as said certificates remain outstanding and uncanceled as herein provided.

IX.

The earnings of said company shall be used in the following order, to-wit: first, to the payment of matured
60 debts and operating expenses; second, to the payment semi-annually of said dividends of ten per centum per annum and any unpaid accrued dividends; third, to such extensions and betterments as may be ordered by the board of public works of said city, and the excess to the payment in whole or partial payments of the amounts subscribed: Provided, however, That when any part of the amount subscribed and paid in by any certificate-holder has been repaid, only the balance unpaid shall thereafter be entitled to receive such dividends of ten per centum per annum.

X.

When said certificate-holder shall have received, by dividends or otherwise, upon said certificates an amount equal to the face value thereof, together with interest thereon at the rate of ten per centum per annum payable semi-annually, then said certificates issued to said subscribers shall be deemed fully paid and cancelled, and it shall be the duty of the trustees and directors of said company to convey said gas plant and property belonging to said company to said city, to be owned and operated or leased by it, and all the rights, title and interest of said company or its certificate-holders, stockholders, officers, directors or trustees, shall be deemed to be fully paid and extinguished, and all such certificates, whether of stock or otherwise, shall be surrendered and cancelled and said corporation shall be wound up.

XI.

The business and prudential concerns of the corporation shall be managed by a Board of Directors consisting of nine (9) members, to be after the first year annually elected by the Board of Trustees, and said annual election shall be held on the second Monday of January of each year thereafter.

XII.

If, upon the expiration of the term and period of the franchise granted by said city of Indianapolis to said parties and assigned to said company, the same shall terminate without the payment of said certificates, together with dividends thereon, at the rate of ten per centum per annum then upon notice to such effect to be given said Board of Directors by said Board of Public Works of said city at least six months before the expiration of said franchise period, the said Board of Directors shall mortgage its gas plant and property for such sum as to enable it to pay its stock or certificate-holders an amount which, with what has already been paid, will equal the full amount of such subscription with dividends estimated at the rate of ten per centum per annum thereon, and with the proceeds thereof, or with the mortgage notes so issued in proper amounts, pay off and discharge the amounts due such certificate-holders and convey said plant to said city subject to such obligations and other legal obligations against said company: Provided, however, That by the terms of said mortgage such obligation shall bear interest not exceeding six per centum per annum and be payable on or before ten years from date of execution.

XIII.

The term of the existence of the company shall be fifty (50) years.

XIV.

There shall be nine (9) directors of said company, and for the first year these shall be: Frank D. Stalnaker, Franklin Vonnegut, Joseph Littell, James L. Keach, Edward H. Eldridge, Lorenz Schmidt, George J. Marott, J. D. Forrest and Alfred F. Potts.

XV.

The names of the five (5) trustees herein provided are as follows: William D. Cooper, Lucius B. Swift, Thomas L. Sullivan, Henry Kahn and Thomas H. Spann.

In witness whereof the undersigned have hereunto set their

hands and subscribed, as indicated, the amount of the capital stock of said company set opposite their respective names.
[Here follow the names of the incorporators.]

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By-Laws.

Article I.

Trustees.

1. The Trustees shall elect a President and Vice-President from among their number and a Secretary. All officers shall hold office at the pleasure of the board.

2. The annual meeting of the Trustees of the company shall be held on the second Monday of January of each year at 4 o'clock p.m., at the principal office of the company. Special meetings may be held at any time on the call of the President of the Board of Trustees, or of any three members of the Board of Trustees, or on call of the Board of Directors.

3. A notice of all meetings shall be mailed to each trustee at his postoffice address appearing upon the records of the company five days before each annual meeting and twenty-four hours before each special meeting, which notice, in case of a special meeting, shall state the object or objects for which it is called. No business shall be transacted at a special meeting except as stated in the notice sent to the Trustees, unless all members of the Board are present.

4. At any meeting of the Trustees a quorum for the transaction of business shall consist of a majority of the Board; and a majority of the Board shall vote the entire capital stock as a unit on all matters on which the owners of the stock would be entitled by law to vote if the said stock were not held in trust by said Trustees.

5. The Trustees may at any time make a thorough and careful examination of the accounts of the company, and verify the same; and may appoint such expert accountants as may be necessary, the compensation of said experts to be fixed by the Trustees and paid by the company. Or the Trustees may appoint a committee of three stockholders not directors of the company, who may conduct such examination, and such committee may employ such expert accountants, who shall receive such compensation as the Trustees may order.

Article II.

Certificates of Stock and Trustees' Certificates.

1. Certificates of stock shall be in form adopted by the Board of Directors and shall be signed by the President, or Vice-President and the Secretary and sealed with the corporate seal. Trustees' certificates shall be prepared by the and shall be signed by the President of the Board of Trustees, attested by the President and Secretary of the Board of Directors, and sealed with the corporate seal.

2. Transfers of trustees' certificates may be made only upon the books of the company by the holder thereof in person or by his duly authorized attorney, and no transfers shall be entered except upon the surrender of the certificate properly assigned. No transfers of certificates shall be made within fifteen days before the payment of a dividend. On proper transfer of a trustees' certificate the President of the Board of Trustees shall order a corresponding transfer of the stock represented by said trustees' certificate.

3. Duplicate trustees' certificates may be issued upon proof that any such certificates have been lost or destroyed, the company taking a satisfactory bond of indemnity against any loss or claims that the company may incur by reason of issuing such duplicate certificates. But the Directors and Trustees shall not be compelled to issue any duplicate certificates except upon the order of a court of competent jurisdiction.

4. The Board of Directors may, in accordance with the Articles of Incorporation of the company, declare dividends from the net earnings or surplus of the company over and above the amount which from time to time may be fixed by the Board as the amount to be reserved for the enlargement of the company's equipment or for working capital. The Directors may increase, diminish and vary this surplus reserve in their judgment and discretion.

5. The capital stock of the company may be increased as provided by the company's franchise and by statute, by resolution of the Board of Directors and approval by the Board of Directors and approval by the Board of Trustees
62 at a meeting called for the special purpose of considering such proposed increase.

6. The Board of Directors shall provide a suitable seal, containing the name of the company, which seal shall be in charge of the Secretary.

Article III.

Directors and Meetings.

1. The Board of Directors shall meet on the first Tuesday after the annual election at 4 o'clock p.m., at the principal office of the company and shall organize by electing a President, Vice-President, Secretary and Treasurer, who shall serve for one year and until their successors are elected and qualified. The President and Vice-President shall be members of the Board. The same person may be elected to the offices of Secretary and Treasurer.

2. The Directors, by a two thirds vote of the members of the Board, may remove any officer or agent of the Board of Directors whenever, in their judgment, the interests of the company may require it.

3. Any office, except Director, made vacant by death, resignation, or removal, shall be filled by vote of the Board of Directors at the next regular or called meeting after the occurrence of such vacancy.

4. The regular meetings of the Board of Directors shall be held on the second Tuesday of each month at the principal office of the company at such time as the Board shall designate. Five members shall constitute a quorum for the transaction of business, but a smaller number may adjourn the meeting from time to time when a quorum is not present. Special meetings may be called at any time on the request in writing of three members, which request shall state the object of the meeting so called, and shall be filed with the Secretary of the Company, whose duty it shall be to notify the members of the time of such called meeting by mailing notice to their respective postoffice addresses, as recorded at the office of the company, at least twenty-four hours prior to the time named for said meeting; but such notice may be waived by any Director. Or a special meeting may be called in the same manner by the Secretary on the order of the President, such order to state the object of the meeting. No business other than that which is specified in the call shall be considered at such called meeting, except when every member of the Board is present. The Board may adjourn any regular or called meeting to a time named in the order of adjournment, in which case no notice of such adjourned meeting need be given.

5. At meetings of the Board of Directors business shall be transacted in such order as, from time to time, the Board may determine.

Article IV.

Duties of Officers.

1. It shall be the duty of the President to preside at all meetings of the Board of Directors, to sign the records of the proceedings of the Board, and in the name of the company to execute and sign all stock certificates and such other papers, contracts and agreements as the Board may order, and to perform all other executive duties required of him by the Board.

2. It shall be the duty of the Vice-President to perform all the duties of the President in case of absence or disability of that officer.

3. It shall be the duty of the Secretary to keep a faithful record of the proceedings of the Board of Directors and to attest the same after it shall have been signed by the President. He shall have general charge of all the books, accounts, documents and papers belonging to the company or pertaining to its business, which books, documents, papers and accounts shall be produced by him at any time on order of the Board. He shall also keep correct accounts in books provided for that purpose of all dealings of the corporation with its stockholders, officers, creditors, customers and others, according to such system as may be approved by the Board of Directors. He shall attest and fix the corporate seal to all stock certificates, trustees' certificates, and other documents requiring it, and shall keep a complete record of certificates of stock in the hands of the Trustees and of certificates issued by the Trustees to the purchasers of the capital stock of the company and their assigns. As soon as practicable after June 30 and December 31 of each year he shall prepare and publish in two Indianapolis newspapers of general circulation a detailed report of the affairs of the company for the preceding six months, together with a complete exhibit of its resources and liabilities; and the report as of January 1 shall set forth the operations of the preceding year.

63 It shall be his duty to see that all the orders of the Board of Directors are carried out. He shall have direct control of

the general office and supervision of all other departments, and appointments by heads of departments shall be subject to his approval. He shall appoint all employes in the general office: Provided, however, that the approval of the Board of Directors shall be obtained before any person shall be employed on a monthly salary or on a contract for regular employment extending over a longer period than one month.

4. It shall be the duty of the Treasurer to cause all moneys of the company to be deposited daily in such depositories as may be designated by the Board of Directors. He shall pay out money on checks countersigned by the Secretary, but only on vouchers signed by the Secretary and approved by the Chairman of the Executive Committee, or approved by general orders of the Executive Committee, signed by its Chairman. He shall, at the regular meeting each month, make, or cause to be made, a report of the receipts and expenditures of the preceding month, and shall make such reports as may be required by the Board of Directors in addition to the annual and semi-annual reports of the Secretary, as required in Section 3 of this article. On his request the Board of Directors may authorize him to appoint such expert assistants as may be necessary to make special examinations of the books of the company.

Article V.

Executive Committee.

1. At the first meeting of the Board of Directors each year there shall be elected an Executive Committee consisting of three members of the Board. The Board shall designate the member of the Committee who shall serve as its Chairman; but the Committee may select a temporary Chairman in the absence of the one appointed by the Board. The Board of Directors shall fill vacancies in the Executive Committee by election from the Directors, and at all times it shall be the duty of the Board of Directors to keep the membership of the Committee full.

2. It shall be the duty of the Executive Committee to execute the orders of the Board of Directors, except as otherwise provided for by these by-laws or by resolution of the Board. But the action of the Committee shall be reported from time to time to the Board, and shall not be binding on the company until approved by the Board, except in such matters as are authorized by these by-laws.

3. The Committee shall hold regular meetings at the company's principal office, at an hour to be designated by the Committee, on the first and third Tuesdays of each month, at which time, in addition to such other business as may come before it, it shall audit and pass upon all bills presented against the company and shall report the same to the Board of Directors at its next regular meeting. All such claims so audited shall be counter-signed by the Chairman of the Committee, and no voucher shall be paid by the Treasurer except when so countersigned, except that the Treasurer may be authorized from time to time by general order of the Executive Committee to pay certain designated accounts without the signature of the Chairman on a separate voucher for each check to be drawn in making such settlements. Special meetings may be held by the Executive Committee on call of the Chairman or by resolution of the Board of Directors.

4. The Secretary, or some person designated by the Secretary, shall keep a faithful record of the proceedings of the regular and special meetings of the Executive Committee, and all action by the said Committee shall be reported to the Board of Directors at its meetings next succeeding such action, and shall be subject to revision and alteration by said Board.

5. A majority of the Committee shall constitute a quorum, but the Chairman alone shall constitute a quorum for the auditing and approving of claims, but only at the time and place herein designated for the regular meetings of the Committee.

Miscellaneous.

1. Resignations of directors, officers, and members of the Executive Committee shall be in writing, addressed to the Board of Directors.

2. During the temporary absence or disability of both the President and Vice-President, or of the Secretary, Treasurer, or Chairman of the Executive Committee, the Board of Directors or, during intervals between meetings of the Board, the Executive Committee may designate some other member of the Board to sign checks, vouchers and other papers of the company; and the responsibility of the officer thus relieved shall wholly cease for acts performed during such period.

3. Every Director shall receive the sum of \$5.00 for at-

tendance at each meeting of the Board or of the Executive Committee, when a member of that Committee, but only when the records of such meeting shall show that he was present within ten minutes of the time set for the beginning of said meeting and that he remained until the adjournment of the same; provided that no such compensation shall be received when no business is transacted by reason of absence of a quorum at such meetings of the Board or of the Executive Committee; and provided further that no compensation shall be received for such service rendered prior to January 1, 1909.

No Director shall receive any other compensation for his services as Director, officer or member of any committee, except on affirmative vote of a majority of all the members of the Board of Directors.

4. When a designated meeting for the Board of Trustees, Board of Directors, or Executive Committee, falls on a legal holiday, such meeting shall be held on the day following.

5. The Board of Directors shall require the Secretary and the Treasurer to give bond for the faithful performance of their duties in such sums and with such sureties as the Board may consider necessary; and any other officer or employee may be required by the Board to give such bond. The expense of procuring such surety shall be borne by the company.

6. No mortgage indebtedness shall be created except by affirmative vote of a majority of all Directors and the approval of the Board of Trustees. All votes on such motions shall be viva voce, and the ayes and nays shall be recorded.

7. The company shall make no contribution whatever from its money or other property for any political, religious, educational, charitable, or other purpose.

8. These by-laws may be amended, altered or repealed only by vote of two-thirds of all Directors and approval of the Board of Trustees, except that such as relate to the organization, meetings and order of business of the Board of Trustees may be altered by that body alone.

9. These by-laws shall be in force from and after approval by the Board of Trustees.

[These By-Laws were approved by the Trustees, January 13, 1908.]

Amendments.

Reserve Fund for Required Extensions.

The Board of Directors may, at any dividend-declaring time, deduct from the earnings before determining the amount dividend then to be declared such a sum as, in their judgment, may reasonably be required to defray the cost and expense of making such extensions as the Board of Public Works may, under the Franchise of the Company, require the company to make within the six months' period ending June 30, or December 31 next thereafter as the case may be. Such an amount shall be carried as an asset of the amount in a contingent fund for making such extensions. Against such fund shall be charged the cost of such extensions so required to be made by said Board of Public Works. The amount remaining in such fund at the end of each six months' period shall be returned to the earnings account, then to be dealt with as the circumstances of the case may require.

Approved by Trustee Nov. 22, 1910.

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Depreciation.

The Board of Directors may, in their discretion, from time to time cause to be charged off of the assets of the corporation such a sum as, in their judgment, represents the reasonable depreciation of its assets as shown according to the last preceding inventory of the assets of the corporation and deduct such amount from the apparent earnings otherwise applicable to the payment of dividends; and all such sums so charged off on account of such depreciation shall be contingently credited to depreciation account, against which shall be charged from time to time the cost of making good such depreciations as may from time to time be ordered by the Board. And if thereafter by actual experience it has been found that a greater sum has been accumulated in such depreciation fund than fairly represents the amount of such depreciation, all things considered, making such amount over and above a just estimate of such depreciation, it may be withdrawn from such fund and be placed in current funds for dividend purposes.

Approved by Trustee Nov. 22, 1910.

Time for Paying Dividends.

Within ninety days after the first of January and July in each year, the Directors shall cause a careful account to be taken of all of the earnings of the company within the six months preceding such named dates, and after making reasonable deductions therefrom for depreciation and anticipated extensions required to be made by the Board of Public Works, they shall declare and pay from such earnings such a dividend to the stockholders as the surplus of such earnings may justify.

Approved by Trustee Nov. 22, 1910.

An Ordinance ratifying, confirming and approving a certain contract and agreement made and entered into on the 29th day of November, 1911, between the city of Indianapolis, by and through its Board of Public Works, and the Citizens' Gas Company of Indianapolis, Indiana, viz:

(Approved May 22, 1912. General Ordinance Record 13, Page 341.)

This contract and agreement made and entered into by and between the city of Indianapolis, of Marion County, Indiana, by and through its Board of Public Works, party of the first part, and the Citizens' Gas Company of Indianapolis, Indiana, a corporation organized and acting under and pursuant to the laws of the State of Indiana, party of the second part, witnesseth:

Whereas, Said city of Indianapolis, on the 25th day of August, 1905, entered into a certain contract with Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, which contract was approved by an ordinance adopted by the Common Council of the city of Indianapolis, and approved by the Mayor of the city of Indianapolis, August 30, 1905, by the terms of which contract there was granted unto said Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, for themselves and their assigns, a franchise for the manufacture and sale of gas; and

Whereas, Said contract, pursuant to the provisions of Section 24 thereof, was assigned to the said Citizens' Gas Company, party hereto, and,

Whereas, It is desired for the mutual benefit and accommodation of the parties that certain provisions of said contract shall be amended;

Now, Therefore, it is agreed by and between the parties hereto as follows:

Sec. 1524. 1. That Section 17 of said contract, hereinabove referred to, be amended to read as follows:

The parties of the second part hereby bind themselves, their successors and assigns, to so extend the various lines and mains of said plant that all the inhabitants of said city may be supplied with gas for fuel and lighting purposes, when

they may reasonably require the same and when a petition therefor has been presented to the Board of Pub-

66 lic Works signed by the owners of the property in any territory in said city asking for such extension, and in which said owners or occupants of at least three houses already erected shall bind themselves to make five or more stove or grate connections or fifteen or more burner connections, and to use the same, for each five hundred (500) feet of space that said lines are asked to be extended. Whenever such petition has been filed with the said Board of Public Works it shall cause written notice to be given to the parties of the second part, their successors or assigns, which may be served on any officer or employe of said parties of the second part or assigns, at the main Indianapolis office of said parties or assigns, requiring said parties of the second part or assigns to appear before said Board of Public Works at a certain hour specified in said notice in not less than five days after the serving of such notice, to show cause why the prayer of said petitioner should not be granted. Such notice shall contain an accurate description of the streets, alleys and public places through and along which such extension is asked and the territory and inhabitants of which it is proposed to supply with gas, as aforesaid. On the day and at the time named in such notice the Board of Public Works shall give to the parties of the second part, or assigns, if they so desire, a full hearing on the question as to whether such petition has been signed by the required number of owners and occupants of property who have agreed therein to take and use the number of stoves or grate connections or burners, and whether such extension should be required; if said parties of the second part or assigns should not appear before said Board of Public Works at the time fixed in said notice, said Board of Public Works may act upon such petition and upon such evidence or information as it may have from any source. If said Board of Public Works, after such hearing, shall decide that said petition has been signed as hereinbefore provided, and contains

the agreement as to burners or stove connections herein required, and that such extension may be reasonably required, it may make an order requiring such extension and fixing the time within which said work of extension shall be completed, reasonable time being given, written notice of which shall be given to the parties of the second part, or assigns, and if the parties of the second part, or assigns, should fail or refuse to make such extension within the time limited, unavoidable delays excepted, the parties of the second part, or assigns shall forfeit and pay to said city the sum of fifty (\$50.00) dollars for each and every day that the completion of such extension is delayed beyond the period so fixed, which sum shall be considered as liquidated damages for breach of this contract: Provided, however, That said parties of the second part, or assigns, shall not be required to proceed with the extension of any lines, pipes or mains between the first day of November and the first day of April of the following year, in any year; and, Provided further, That such extension shall not be required by said Board of Public Works of said city unless the earnings of said company will permit the same after payment of the dividend of ten per centum per annum, upon subscribers' certificates; and, Provided, further, That such extensions may be required by said Board of Works of said city during the five years beginning January 1, 1912, to an extent not exceeding in the aggregate in any one year twenty thousand (20,000) feet of mains of adequate size to serve the consumers along such extension; during the five years beginning January 1, 1917, to an extent not exceeding in the aggregate in any one year twenty-five thousand (25,000) feet, and during the remaining term of the franchise, i. e., beginning January 1, 1922, to an extent not exceeding in the aggregate in any one year thirty thousand (30,000) feet, without regard to the previous payment of the dividend of ten per centum per annum upon the subscribers' certificates.

Sec. 1525. 2. That Section 24 of said contract hereinabove referred to be amended to read as follows:

This contract shall not be assigned, nor in any manner transferred, whether directly or indirectly, without the consent of the Board of Public Works, and approval of the Common Council of said city, except by way of mortgage or deed of trust, and as a part of the security for bonds of the company, and which mortgage or deed of trust shall contain, among others, the following limitations and conditions:

First. That such bonds shall bear interest at not to exceed five (5) per cent. per annum.

Second. That there be set aside annually as a sinking fund or otherwise applied toward the immediate or future retirement of such bonds, a sum equal to at least one-half (½) of one per cent. of the total bonds at the time outstanding, beginning not later than five (5) years after issue thereof.

Third. That bonds may be certified at or after the date of the execution of such mortgage or deed of trust to the amount of the bonds heretofore authorized for the purpose of refunding the same, and in addition thereto bonds to the amount of forty (40) per cent. of the present capital stock of the company, which stock has been sold at not less than par, may be certified and used for proper corporate purposes, but that no other bonds shall be issued and certified except for betterments, replacements and extensions to the plant of the company hereafter made or other property for any of the company's corporate purposes hereafter acquired, and this only to the extent of eighty (80) per cent. of the cost thereof: Provided, however, The foregoing shall not be deemed as in any wise affecting the transfer of this franchise heretofore made to the Citizens Gas Company, which transfer was expressly authorized by the terms of Section twenty-four (24) of such franchise, as originally adopted.

In Witness Whereof, The said city of Indianapolis has caused its corporate name to be hereunto affixed by its Board of Public Works, and the said Citizens' Gas Company has caused this instrument to be executed in its name and on its behalf by its president and the due execution thereof to be attested by its secretary and its corporate seal hereto affixed, this 29th day of November, A. D. 1911.

City of Indianapolis,

C. A. Schrader,

Charles L. Hutchins,

E. J. O'Reilly,

Board of Public Works.

Approved:

S. L. Shank,

Mayor.

Citizens' Gas Company of Indianapolis,

By Franklin Vonnegut,

President.

(Seal)

Attest:

J. D. Forrest,

Secretary.

And, Whereas, Said contract and agreement has been submitted through the Board of Public Works, to the Common Council of the city of Indianapolis, for its action thereon; therefore,

Section 1. Be it ordained by the Common Council of the City of Indianapolis, That the foregoing contract and agreement made and entered into on the 29th day of November, 1911, by the city of Indianapolis, by and through its Board of Public Works, and the Citizens' Gas Company, be and the same is hereby in all things ratified, confirmed and approved."

Filed

August 27, 1921.

Ed. Jackson, Secretary of State.

The undersigned, being the holders of record, and the sole voting stockholders of all the stock of Citizens Gas Company of Indianapolis, a corporation organized and acting under and pursuant to the Manufacturing and Mining laws of the State of Indiana, have this day executed the following certificate of amendment to the Articles of Incorporation of said company, the same being executed under and pursuant to the Act of the General Assembly of the State of Indiana, as set out in the Acts of 1913, page 681.

1. Article IV of said Articles of Incorporation is hereby amended to read as follows:

IV.

The amount of capital stock of the Company shall be four million dollars (\$4,000,000), of which two million dollars (\$2,000,000), divided into shares of twenty-five dollars (\$25.00) each, shall be common stock, and two million dollars (\$2,000,000), divided into shares of One hundred dollars (\$100.00) each, shall be preferred stock. The capital stock of said company may be increased as by law provided. Any additional preferred stock shall have equal preferences, both as to principal and dividends, (except as the rate of dividends may vary) with the preferred stock herein authorized. The holders of the preferred stock shall be entitled to receive the dividends expressed in the preferred stock certificate before any dividends are paid on account of the common stock and no further or additional dividends, and, on liquidation of the company, shall be entitled to receive the par value of the preferred stock, plus all accrued dividends, before any

sum if paid on account of the common stock. The preferred stock shall bear such rates of dividends, be subject to redemption at such time and on such terms, and shall be disposed of and issued upon such terms and conditions as the Board of Directors of the Company may deem best. The preferred stockholders shall not have any voting rights in the company. Any premium paid for any stock of the company, common or preferred, shall go to the surplus capital and shall bear no dividend.

2. Article VI of the said Articles of Incorporation is hereby amended to read as follows:

VI.

The entire capital stock of the corporation shall be placed under the control of a board of five (5) trustees and their successors, who shall be stockholders in said company, who shall be designated in said articles of incorporation and one of whom shall be nominated by the mayor of said city, which said Board of Trustees shall have full, complete, exclusive and irrevocable power, during the continuance of this corporation, to hold said stock and vote the same as fully and completely as if they were the owners of said common stock, including the right to elect directors, as herein provided, and to fill any vacancy that may occur in said Board of Directors. Said entire common capital stock shall be voted as a unit; and in case said trustees shall not agree as to how said stock shall be voted, the majority of them shall cast the vote of the board. If a vacancy shall occur in said Board of Trustees by death, resignation, removal from the City of Indianapolis or otherwise, such vacancy shall be filled by the remaining members of the Board, except that the mayor of said city shall appoint the successor to the trustee originally named by such mayor; and in the event of the failure of such board or mayor to fill such vacancy, the Marion Circuit Court shall, upon application of any stockholder, after said trustees or mayor have had ten (10) days' notice in writing of said application, and shall have in the meantime failed to fill such vacancy, appoint some competent person to fill the same.

3. Article VIII of said Articles of Incorporation is hereby amended to read as follows:

VIII.

Said trustees shall issue to each subscriber to the common capital stock of said company, upon full payment by such subscriber to said company of the amount of his subscription, and upon the stock therefor being issued to said trustees as above provided, a certificate showing the amount of stock held by said trustee in trust for said subscriber; and said subscriber, or holder of said certificate by assignment, shall be entitled by virtue thereof to receive from said company all dividends which shall be declared, not, however, exceeding ten per centum per annum, payable semi-annually in money or in payment of any indebtedness of the holders of such certificates as consumers of the gas of said company, so long as said certificates remain outstanding and uncanceled as herein provided.

4. Article IX of said Articles of Incorporation is hereby amended to read as follows:

IX.

The earnings of said company, after the payment of operating expenses and taxes, shall be applied, subject to the discretion by law vested in the directors, but which discretion shall not affect the order in which such application shall be made, in the following order, to-wit:

First, to the payment of any accrued and unpaid dividends upon any preferred stock of the company at the time outstanding; second, to the payment of dividends at the rate of not to exceed 10 per centum per annum upon the common stock, and any unpaid and accrued dividends at the same rate on account of prior years, third, to the payment in whole or partial payments of the par value of the common stock of the company; provided, however, that when any part of the amount subscribed and paid in by any certificate-holder has been repaid, only the balance unpaid shall thereafter be
69 entitled to receive such dividends of ten per centum per annum.

5. Article X of said Articles of Incorporation is hereby amended to read as follows:

X.

When all outstanding preferred stock of the Company shall have been retired and the holders of the certificates representing the common stock shall have received by dividends, or otherwise, upon said certificates, an amount equal to the face value thereof, together with interest thereon at the rate of ten per centum per annum, payable semi-annually, then said certificates shall be deemed fully paid and cancelled, and it shall be the duty of the trustees and directors of said company to convey said gas plant and property belonging to said company to the city of Indianapolis, subject to all outstanding legal obligations of the company, to be owned and operated or leased by it, and all the rights, title and interest of said company or its certificate-holders, stockholders, directors, or trustees, shall be deemed to be fully paid and extinguished, and all such certificates, whether of stock or otherwise, shall be surrendered and cancelled and said corporation shall be wound up.

6. Article XII of said Articles of Incorporation is hereby amended to read as follows:

XII.

If, on the 30th day of August, 1930, that being the date of the expiration of the term and period of the franchise granted by the city of Indianapolis, to Alfred F. Potts, Frank D. Stalaker and Lorenz Schmidt, and which was thereafter assigned to the Citizens Gas Company of Indianapolis, said certificates representing the common stock of the company, together with dividends thereon, at the rate of ten per centum per annum, shall not have been paid, then upon notice of such fact to be given to the directors of said company by the board of public works of said city at least six months before the expiration of such franchise period, the said board of directors shall mortgage its gas plant and property for such sum as to enable it to pay the holders of the certificates representing its common stock, an amount which, with what has already been paid, will equal the full amount of such stock with dividends estimated at the rate of ten per centum per annum thereon, together with the amount necessary to redeem any outstanding preferred stock, and with the proceeds thereon, after redeeming any outstanding preferred stock in

accordance with the provisions therefor contained in the stock certificates, or with the mortgage notes so issued in proper amounts, pay off and discharge the amounts due such holders of the certificates representing its common stock and convey said plant and property to said city, subject to such mortgage and other legal obligations against said company; provided, however, that by the terms of said mortgage such obligation shall bear interest not exceeding six per cent per annum and be payable on or before ten years from date of execution.

In Witness Whereof, the undersigned have hereunto set their hands this 11th day of August 1921.

Thomas L. Sullivan,
Lucius B. Swift,
C. A. Schnull,
Henry Kahn,

*Board of Trustees of Citizens Gas
Company of Indianapolis.*

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EXHIBIT D.

Finding and Order

By Public Service Commission of Indiana.

71

Finding and Order.

In this case the Citizens Gas Company and the Indianapolis Gas Company have filed a petition asking for an order of this Commission authorizing the Indianapolis Gas Company to lease to the Citizens Gas Company and the Citizens Gas Company to lease from the Indianapolis Gas Company for a period of ninety-nine years all of the plant and property of said Indianapolis Gas Company used in the manufacture and sale of gas and its by-products in the city of Indianapolis.

A hearing on the petition was had. Smith, Hornbrook and Smith appeared for the Citizens Gas Company, Ferdinand Winter for the Indianapolis Gas Company, and Joseph B. Kealing, corporation counsel for the city of Indianapolis, for said city. During the progress of said hearing Frank S.

Fishback appeared by Gavin, Gavin and Davis and Woodburn Masson, and as a stockholder in the Citizens Gas Company filed a protest against granting said two gas companies the right to execute said lease on the terms proposed. Said hearing was continued, resumed and adjourned from time to time and much evidence introduced and a valuation of the property of the Indianapolis Gas Company was made by the staff of the Commission, and by experts employed by said company. From the great mass of evidence the following facts are found, and deemed pertinent.

The Indianapolis Gas Company was organized in 1891, its plant being composed of three small plants then operating in the city of Indianapolis. Since said date said company has operated in said city and during a period of some years, while natural gas was abundant in Indiana fields, said company supplied natural gas to said city for heating and to some extent for lighting purposes, and during that period produced but a comparatively small amount of artificial gas for lighting purposes. Said company has three hundred and seventy-five miles of mains in said city, more than forty-one thousand meters, water and coal gas plants and is just completing a modern coke oven plant of large capacity. Its capital stock is two million dollars par value and its bonded indebtedness four million eight hundred and thirty-three thousand dollars. The plant is in good condition throughout and is well managed.

The Citizens Gas Company was organized in 1905, as a citizens organization for competitive purposes with a view to producing gas at sixty cents per thousand cubic feet, and since its organization it has produced gas at that price and at a profit. Its stock is held and voted by a board of trustees selected from the representative citizens of Indianapolis and stockholders of the company, and in such a way as to practically insure the continued management of the affairs of the company as much in the interest of the consumers of gas as in the interest of the stockholders. Its management has been of a very high order throughout its entire existence. It has a capital stock of \$1,250,000 and a bonded indebtedness of \$1,247,000.

The two plants are so constructed and laid out as to adapt the two to a single working plant of great efficiency and under one management they can be operated at a great saving

as compared with the cost of operating them as separate and competitive plants.

The valuation of the plant of the Indianapolis Gas Company is, in the opinion of the Commission, sufficient to justify, under the circumstances, a rental such as is proposed in the subjoined lease. On account of the late date at which the valuation of the plant was begun the engineers have been unable to furnish the Commission complete data of their work and the engineer appointed on the staff of the Commission has been able to furnish tentative values only, and we deem it not advisable to attempt to fix at this time a definite value of the plant, but leave that for a later and separate consideration.

The lessee and lessor have tendered for the approval of the Commission a lease containing all the terms and conditions as agreed upon by and between said parties, which lease is as follows. (Here Insert.)

And the Commission finds that said lease, before being approved, should be changed and modified so as to comply with the following provisions and conditions:

1. That before said lease shall be executed and legalized the said Indianapolis Gas Company shall file with the clerk of the city of Indianapolis, and shall also file said Commission a written declaration, legally executed, that it surrenders its license, permit or franchise, and desires to receive by operation of law in lieu thereof, an indeterminate permit as provided in said Shively-Spencer Utility Commission 72 Act; said Indianapolis Gas Company shall also file with said Public Service Commission a certified copy of its written declaration filed with the clerk of said city of Indianapolis, to which shall be attached a certificate of said clerk certifying to the date upon which said written declaration was filed in the office of said clerk of said city of Indianapolis; Provided, That if the execution of this lease be set aside by judicial proceedings, then such surrender and acceptance of an indeterminate permit shall be set aside and said Company be reinstated without prejudice in its license, permit or franchise so surrendered.

2. That in any subsequent valuation, for rate-making purposes, of the properties owned by the Lessor and the Lessee herein, or either of them, the value of the plants and equipments upon which the said Indianapolis Gas Company and the said Citizens Gas Company, or either of them, shall be

entitled to earn an income, shall include only property actually used and useful for the convenience of the public, and shall not include the value of any unnecessary duplications of parts of said property or properties, and such value of all the property owned by the Lessor and Lessee, or either of them, shall for rate-making purposes be determined exactly the same as if both said companies were operating under an indeterminate permit, as provided in the Shively-Spencer Utility Commission Act.

3. That in any rate-making proceedings hereafter to be determined fixing rates for gas produced and sold by the said Indianapolis Gas Company and the Citizens Gas Company, or either of them, the amount of stocks and bonds of either of said companies now outstanding shall not be deemed to have been capitalized against the public by said proceedings.

The interest and dividends on the stocks and bonds of either of said companies now outstanding shall not be deemed to be or permitted by this proceeding to become fixed charges, the payment of which must be provided for in establishing a just and reasonable rate for the product produced, transmitted, furnished or sold by said Indianapolis Gas Company or said Citizens Gas Company, or either of them.

4. That the power to regulate the rates at which gas produced, transmitted furnished or sold by or through the Indianapolis Gas Company shall during the term of said lease remain in the Public Service Commission of Indiana as fully and completely as it is now vested in said Commission, and by the approval of this lease said Commission shall not be deemed to have waived its right to determine the rate at which gas so produced, sold or transmitted by or through the said Indianapolis Gas Company shall be sold.

5. That the said Citizens Gas Company shall hereafter permit, during the term of this lease, the Public Service Commission of Indiana (or whatever legal commission or authority, that may have conferred upon it powers now conferred upon the Public Service Commission to fix rates for the service produced or sold by public utilities) to fix and determine the rates and charges at which gas produced, transmitted or sold by it through the properties now operated by it or by the Indianapolis Gas Company as fully and completely as if the said Citizens Gas Company had surrendered its license, permit or franchise and received an indeterminate per-

mit as provided in the Shively-Spencer Utility Commission Act.

6. That the said Citizens Gas Company hereby binds itself, its successors, and assigns, to extend the various lines and mains of its plant, as set forth in Section Seventeen of its franchise as amended, and in addition thereto, to extend the mains of the combined plants of the Lessor and the Lessee, to the extent of at least three (3) miles in any one year, such mains to be of adequate size to serve the consumers along such extensions. In addition to such minimum requirements, the Public Service Commission of Indiana, or any body succeeding to its duties, shall be permitted, upon petition of the proper authorities of the city of Indianapolis, to order additional extensions to a reasonable amount, upon proper evidence that such extensions are necessary, and will, if made, provided a reasonable return on the cost thereof.

After the Citizens Gas Company shall cease to operate under the franchise from the city of Indianapolis now held by it, said company, its successors and assigns, shall make such extensions to its mains as may be required by the public officials having authority in the premises.

7. The said Citizens Gas Company hereby covenants and agrees to file with the Public Service Commission of Indiana, as that the same may be effective on the first day of 73 January, 1914, a schedule showing the following rates, tolls and charges for gas transmitted, produced and sold by it, to wit:

For the first fifty thousand (50,000) cubic feet of gas transmitted, sold or furnished by it, to any one consumer in any one month, through one meter, fifty-five cents (55c) per thousand cubic feet.

Forty-five cents (45c) per thousand cubic feet for all in excess of fifty thousand (50,000) cubic feet and not in excess of one hundred thousand (100,000) cubic feet, furnished to any one consumer in any month, through one meter.

Forty cents (40c) per thousand cubic feet of gas in excess of one hundred thousand (100,000) cubic feet, furnished to any one consumer in any one month through one meter.

8. That the Lessor and the Lessee, each for itself, hereby expressly covenants and agrees that this lease shall remain in full force and effect so long as each one separately of the conditions hereinafter set forth, numbered respectively 1, 2, 3, 4, 5, 6 and 7, shall be complied with, not to exceed a term

of ninety-nine (99) years, and the Lessor and the Lessee, each for itself, covenants and agrees with each other and with the Public Service Commission of Indiana, that the violation of any one of said conditions numbered as aforesaid shall, at the option of the Public Service Commission of Indiana, forfeit this lease and render the same null and void; provided, however, before declaring such forfeit for any such cause or as provided in the habendum clause of this lease, such Public Service Commission of Indiana shall give not less than thirty (30) days' notice of its proposed action to each of the parties hereto, and if, within thirty (30) days thereafter the party not in default shall begin action to compel the party in default to do or cease to do the thing on account of which said Public Service Commission proposes declaring such forfeit, and shall diligently prosecute such action to final decision, then the Public Service Commission shall not proceed further in the matter of such forfeit, until the final termination of such action, and if as a result of such action or prior thereto, by voluntary act of the defaulting party, the default shall be corrected, then the Public Service Commission shall not be authorized to forfeit this lease.

9. The approval of this lease by the Public Service Commission of Indiana, shall not be deemed in anywise to authorize the issuance of any bonds by either the Lessor or the Lessee for any of the purposes specified by the terms of this lease, without the consent of such Public Service Commission to such issuance being obtained from time to time, as is now or may hereafter be provided by law.

10. The Lessee will pay to the Lessor as additional rental for the demised property:

On the first day of December, 1913, at the rate of one hundred and twenty thousand dollars (\$120,000) per annum, for that portion of the year 1913, during which this lease may be effective; and on the 30th day of June and the 31st day of December, thereafter, sixty thousand dollars (\$60,000). Provided, that when the maximum price of gas to the general consumer shall be fixed at a sum more than forty-five cents (45c) and not more than fifty cents (50c) per thousand cubic feet, sixty days or more prior to the date when any semi-annual payment of rent shall be due, then said semi-annual payment of rent and all subsequent semi-annual payments until a further reduction in the price of gas as hereinafter provided shall be made, shall be in the sum of sixty-five thousand

dollars (\$65,000); and provided further, that when the maximum price of gas to the general consumer shall be fixed at any sum not more than forty-five cents (45c) per thousand cubic feet sixty days or more prior to the day when any semi-annual payment of rent shall be due, then said semi-annual payment and all subsequent semi-annual payments of rent shall be in the sum of sixty-seven thousand and five hundred dollars (\$67,500).

11. The execution of this lease by the Lessor and the Lessee as herein provided shall be conclusively presumed to be an acceptance by the Lessor and the Lessee of each one separately of the terms and conditions herein set forth.

Comes now the said Citizens Gas Company and the said the Indianapolis Gas Company and submit the following lease as embodying the said provisions and conditions herein fixed by the Public Service Commission of Indiana, said lease being in words and figures as follows: (Here insert)

And the Commission, having examined said lease and being advised in the premises, now orders that the same be approved and spread upon the records of said Commission.

74 I. J. L. Reily, Secretary of the Public Service Commission of Indiana, hereby certify that the above and foregoing order is a true and complete copy of an order this day made by said Commission, as appears of record in my office.

Witness my hand and seal this first day of October, 1913.
Indianapolis, Indiana,

October 1, 1913.

J. L. Reily,
Secretary.

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EXHIBIT E.

Instrument of Transfer and Assignment of Personal Property of Citizens Gas Company of Indianapolis.

76 Instrument of Transfer and Assignment of Personal Property.

Whereas, the City of Indianapolis has taken all the necessary steps and performed all the required conditions in the exercise of its right to acquire, take over and administer as a

public charitable trust all the property of Citizens Gas Company of Indianapolis, pursuant to the terms and provisions of the original and amended articles of incorporation of said Company and the franchise agreement entered into on the 25th day of August, 1905 between the said City, by and through its Board of Public Works, and Alfred F. Potts, Frank W. Stalnaker and Lorenz Schmidt, which franchise and contract was assigned to and accepted by the said Company on the 24th of May, 1906; and

Whereas, the right of the City of Indianapolis to acquire, take over and administer the property of the Citizens Gas Company of Indianapolis, as the beneficiary of the said public charitable trust, has been legally established and adjudicated by the judgment and decision of the United States District Court for the Southern District of Indiana in the suits instituted by Newton Todd and by John J. Cotter and others against the said Citizens Gas Company of Indianapolis and others, which judgment and decision was affirmed upon appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and a petition for a writ of certiorari to the United States Supreme Court thereafter denied; and

Whereas, the City of Indianapolis has deposited with The Indiana National Bank of Indianapolis, in a special account to the credit of the Citizens Gas Company of Indianapolis, the sums of \$2,590,000 and \$1,050,000, to be held by the said Company as trust funds to be used for the sole purpose of retiring, respectively, the outstanding common stock of said Company at the par value thereof plus dividends at the rate of 10% per annum and retiring the outstanding preferred stock of said Company at 105% of the par value thereof, (said Company, by its Board of Directors, has furnished and made provision for the funds necessary for the payment of the dividend upon such preferred stock for the current quarter expiring August 31st, 1935.); and

Whereas, nothing further remains to be done by the City of Indianapolis to entitle it to have all the property of the Citizens Gas Company of Indianapolis, including the property hereafter described, conveyed and transferred to said City, pursuant to the provisions of said franchise agreement and the original and amended articles of incorporation of said Company and in accordance with the judgment and decision of said Courts.

Now, Therefore, in consideration of the premises and for

the purpose of carrying out and executing the public charitable trust as aforesaid, the Citizens Gas Company of Indianapolis, a corporation organized and existing under the laws of the State of Indiana, hereby sells, transfers, assigns and delivers to the City of Indianapolis, a municipal corporation organized and existing under the laws of the State of Indiana, all of the personal property and chattels owned and belonging to said Company of any nature or form whatsoever, and meaning hereby to include all property, (excepting real property), tangible and intangible, personal and mixed, executed and executory contracts, accounts, deposits, cash and any other form of personal and chattel property whatsoever, whether or not used by the said Company in its business of the manufacture and sale of gas and by-products of gas.

Attached hereto is a list of executory contracts executed in the name of or assigned to the said Company which are intended to be specifically assigned and the benefits transferred to the said City hereby. The inclusion of such list of specific contracts shall not be deemed to exclude any other executory or executed contracts or agreements of said Company, but all such contracts and agreements shall be deemed to be assigned and transferred to said City by this instrument.

This instrument shall be deemed also to assign and transfer to the said City all the contracts and policies of insurance, of any nature and for whatsoever, held and possessed by the said Company, and the said City shall have the benefit to and right to recover any payments thereunder for the remainder of the unexpired term of any and all of such contracts and policies.

This instrument shall be deemed also to assign and transfer to the said City all the right, title and interest of the said

Company in and to the capital stock of Milburn By-Products Coal Company, a corporation organized and existing under the laws of the State of West Virginia, the wholly owned subsidiary corporation of said Company.

The foregoing transfer and assignment is made, however, subject to the following exceptions and conditions:

1. Said transfer and assignment is made pursuant and subject to, and in conformity with the terms, conditions and agreements contained in the original and amended articles of incorporation of Citizens Gas Company of Indianapolis, the franchise agreement entered into between said Company's assigners and the City of Indianapolis, under date of August 25th, 1905, as aforesaid, and Chapter 78 of the Acts of 1929 of the General Assembly of the State of Indiana.

2. Said transfer and assignment is made subject also to the mortgage executed by Citizens Gas Company of Indianapolis, the Bankers Trust Company of New York, Primary Trustee, and The Union Trust Company of Indianapolis, Ancillary Trustee, under date of July 1, 1912, and recorded in Mortgage Record 593, page 399, in the office of the Recorder of Marion County, Indiana, in the principal amount of \$10,000,000, and to all other existing liens, incumbrances and assessments of any nature whatsoever.

3. Said transfer and assignment, and the conveyance of the real property and the assignments of the leases hereinafter mentioned, separate instruments for which conveyance and assignments are being executed and delivered contemporaneously with this instrument, are made subject to all unpaid current obligations, bills and pledges of the said Company, including obligations incurred in the ordinary course of business of the Company, contracts for the purchase of coal and other supplies, contracts for the sale of products, pledges for charitable and other purposes, and all other current obligations, accounts and contracts of every nature whatsoever. All of such obligations, bills and pledges shall be paid by the said City in due course of business, and, until paid or otherwise disposed of, each and all shall remain a charge upon all of the property hereby transferred and assigned. Said City shall take such property subject to all taxes due Federal, State, County or City governments, including the Indiana State Gross Income, Federal Income, Excess Profits, and Capital Stock taxes which may be payable for all or any part of the year 1934 and 1935 by the said Company, and any and all additional assessments made or which may be made on account of taxes due for any prior years.

4. This transfer and assignment also are made subject to all other legal obligations of said Company, including the legal obligations of said Company, if any, under each of the leases hereinafter mentioned.

5. The assignment of the lease agreement made and entered into the 30th of September, 1913, between said Company and The Indianapolis Gas Company, whereby the latter company leased certain property for the manufacture and sale of gas and gas by-products to said Company for a term of ninety-nine years, and the assignment of the agreement of lease executed the 18th of July, 1933, between John J.

Reilly, Receiver of Majestic Building Company, and said Company, are expressly excluded from this instrument of transfer and assignment, separate instruments of assignment of such lease agreements being executed and delivered contemporaneously with this instrument.

This section in no way modifies or alters the provisions of of the last preceding section that this transfer and assignment are made subject to all legal obligations of said Citizens Gas Company of Indianapolis, including the legal obligations of said Citizens Gas Company, if any, under each of said two leases.

6. All funds and Deposits of said Company transferred and assigned hereby which are held by it in trust for any person or purpose or which are of a special nature shall preserve their character and status as such, and this transfer and assignment shall not be deemed to affect the present rights of any person in and to said funds or deposits. The rights of any ~~one~~all of the employees of said Company to the benefits of any group insurance policy or policies shall not be affected or altered by the said transfer and assignment.

7. For the purpose of providing funds to meet and pay all outstanding cheques heretofore issued, the said Company has reserved a balance in its bank deposit sufficient for that purpose. Said Company has reserved a balance in its 78 bank deposit sufficient also to cover and pay the cheques heretofore executed but not actually delivered, in payment of the dividend upon the outstanding preferred stock of the Company for the current quarter ending August 31st, 1935, as aforesaid.

8. Said Company shall make and execute any and all other instruments necessary to carry out and execute the public charitable trust as aforesaid and to carry out completely the purpose and intent as hereinabove set forth.

In Witness Whereof, the said Citizens Gas Company of Indianapolis has caused this instrument to be executed by its Vice-President and the due execution thereof to be attested by its Secretary and by its corporate seal hereto affixed, this 9th day of September, 1935.

Citizens Gas Company of Indianapolis,

By Franklin D. Vonnegut,

Vice-President.

Attest:

Gastenburg,

Secretary.

State of Indiana, }
County of Marion. } ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 9th day of September, 1935, personally appeared Franklin D. Vonnegut, Vice-President of Citizens Gas Company of Indianapolis, and for and on behalf of the Company of which he is Vice-President, acknowledged the execution of the foregoing instrument of transfer and assignment of personal property.

Witness my hand and Notarial Seal.

William G. Sparks,
Notary Public.

My commission expires Oct. 30, 1938.

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EXHIBIT F.

Assignment of Lease.

80

Assignment of Lease.

Whereas, the City of Indianapolis has taken all the necessary steps and performed all the required conditions in the exercise of its right to acquire, take over and administer as a public charitable trust all the property of Citizens Gas Company of Indianapolis, pursuant to the terms and provisions of the original and amended articles of incorporation of said Company and the franchise agreement entered into on the 25th day of August, 1905, between the said City, by and through its Board of Public Works, and Alfred F. Potts, Frank W. Stalnaker and Lorenz Schmidt, which franchise and contract were assigned to and accepted by the said Company on the 24th day of May, 1906; and

Whereas, the right of the City of Indianapolis to acquire, take over and administer the property of the Citizens Gas Company of Indianapolis, as the beneficiary of the said public charitable trust, has been legally established and adjudicated by the judgment and decision of the United States District Court for the Southern District of Indiana in the suits instituted by Newton Todd and by John J. Cotter and others against the said Citizens Gas Company of Indianapolis and

others, which judgment and decision was affirmed upon appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and a petition for a writ of certiorari to the United States Supreme Court thereafter denied; and

Whereas, the City of Indianapolis has deposited with The Indiana National Bank of Indianapolis, in a special account to the credit of the Citizens Gas Company of Indianapolis, the sums of \$2,500,000 and \$1,050,000, to be held by the said Company as trust funds to be used for the sole purpose of retiring, respectively, the outstanding common stock of the said Company at the par value thereof plus dividends at the rate of 10% per annum and retiring the outstanding preferred stock of said Company at 105% of the par value thereof (said Company, by its Board of Directors has furnished and made provision for the funds necessary for the payment of the dividend upon such preferred stock for the current quarter expiring August 31st, 1935); and

Whereas, nothing further remains to be done by the City of Indianapolis to entitle it to have all the property of the Citizens Gas Company of Indianapolis, including the property hereafter described, conveyed and transferred to said City, pursuant to the provisions of said franchise agreement and the original and amended articles of incorporation of said Company, and in accordance with the judgment and decision of said Courts;

Now, Therefore, in consideration of the premises and for the purpose of carrying out and executing the public charitable trust as aforesaid, the Citizens Gas Company of Indianapolis a corporation organized and existing under the laws of the state of Indiana, hereby assigns and conveys unto the City of Indianapolis, a municipal corporation organized and existing under the laws of the state of Indiana, all the said Company's right, title and interest in and to the certain lease bearing date of the 30th day of September, 1913, made by the Indianapolis Gas Company, a corporation organized and existing under the laws of the State of Indiana, to Citizens Gas Company of Indianapolis, a corporation organized and existing under the laws of the State of Indiana, and recorded in the office of the Recorder of Marion County, Indiana, in Miscellaneous Record 78, at page 257, of certain property for the manufacture and sale of gas and gas by-products for the term of ninety-nine years, to have and to hold the same unto the said City of Indianapolis from

the date of this instrument, for and during all the residue of said term of ninety-nine years mentioned in said lease, subject nevertheless to the rents, covenants, conditions and provisions therein mentioned.

1. This conveyance is made pursuant and subject to, and in conformity with, the terms, conditions, and agreements contained in the original and amended articles of incorporation of Citizens Gas Company of Indianapolis, the franchise agreement entered into between said Company's assignors and the City of Indianapolis, under date of August 25th, 1905, as aforesaid, and Chapter 78 of the Acts of 1929 of the General Assembly of the State of Indiana.

2. This assignment is made subject also to the mortgage executed by Citizens Gas Company of Indianapolis, to Bankers Trust Company of New York, Primary Trustee, and The Union Trust Company of Indianapolis, Ancillary Trustee, under date of July 1, 1912, and recorded in Mortgage Record 593, page 399, in the office of the Recorder of Marion County, Indiana, in the principal amount of \$10,000,000, and to all other existing liens, incumbrances and assessments of any nature whatsoever.

3. This assignment is also made subject to all other legal obligations of said Citizens Gas Company of Indianapolis.

Citizens Gas Company of Indianapolis,

By Franklin D. Vonnegut,

Vice-President.

Attest:

Gastenburg,
Secretary.

State of Indiana,)
County of Marion.) ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 9th day of September, 1935, personally appeared Franklin D. Vonnegut, Vice-President of Citizens Gas Company of Indianapolis, and for and on behalf of the Company of which he is Vice President, acknowledged the execution of the foregoing assignment of lease.

Witness my hand and Notarial Seal.

William G. Sparks,
Notary Public.

My Commission Expires October 30, 1938.

Resolution for Rejection of Assignment of Lease Between
The Indianapolis Gas Co. and Citizens Gas Company of
Indianapolis.

83 Resolution for Rejection of Assignment of Lease Be-
tween The Indianapolis Gas Co. and Citizens Gas Com-
pany of Indianapolis.

Whereas, pursuant to rights and duties heretofore estab-
lished, Citizens Gas Company of Indianapolis, an Indiana
Corporation, has this day executed and tendered to the City
of Indianapolis and its Board of Directors for Utilities, in-
struments of transfer of all of its property, including a deed
of conveyance of real estate, assignments of lease interests,
and assignments of personal property, subject to the legal
obligations of said Company including the obligation of a cer-
tain lease bearing date of September 30, 1913, by and between
the Indianapolis Gas Company, an Indiana corporation, and
Citizens Gas Company of Indianapolis, recorded in Miscel-
laneous Record 78 at page 257 and following in the office of
the Recorder of Marion County, Indiana; and

Whereas, said Citizens Gas Company of Indianapolis has
also this day executed and tendered to the City of Indianapo-
lis and its Board of Directors for Utilities an instrument pur-
porting specifically to assign said The Indianapolis Gas Com-
pany lease to said City, subject to the terms and conditions
contained in said lease; and

Whereas, this Board deems said lease to be onerous and
disadvantageous to the City of Indianapolis, and in the dis-
cretion of this Board said lease should not be taken over,
adopted, or assumed, but should be wholly rejected, its as-
signment not accepted, and said lease should not be recog-
nized as one of the obligations, if such it is, of said Citizens
Gas Company of Indianapolis to which any property of said
Company is subjected when in the possession of the City of
Indianapolis; and

Whereas, this Board in its discretion determines that the
other property of said Citizens Gas Company of Indianapolis
should be accepted upon the condition that such property is
not subject to any obligation to said The Indianapolis Gas
Company;

Now Therefore be it Resolved By The Board of Directors for Utilities of the City of Indianapolis, Indiana, in the exercise of the discretion conferred upon it by law, and on behalf of the City of Indianapolis:

1. That the City of Indianapolis by this Board accept the tendered assignments, transfers, and conveyances of all of the property of Citizens Gas Company of Indianapolis, an Indiana corporation, excepting, however the certain lease executed by The Indianapolis Gas Company, an Indiana corporation, to said Citizens Gas Company, bearing date of September 30, 1913; and on the assumption and condition that such acceptance in no way obligates the City of Indianapolis to said The Indianapolis Gas Company under said lease.

2. That the City of Indianapolis by this Board refuses to assume and be bound in any manner by the terms and provisions of said lease.

3. That the City of Indianapolis by this Board rejects and refuses to accept the assignment of said lease tendered by said Citizens Gas Company of Indianapolis to the City.

4. That the City of Indianapolis by this Board refuses to recognize said lease as an obligation of said Citizens Gas Company of Indianapolis which the City is bound to accept, or which in any respect whatsoever is one to which the property of said Citizens Gas Company of Indianapolis, when transferred to this City, is in any manner subject or which constitutes a charge upon such property.

5. That the following instrument be executed and served upon The Indianapolis Gas Company and recorded in the office of the Recorder of Marion County, Indiana:

Rejection of Assignment of Lease and Refusal to Assume,
Take Over Or Be Bound Thereby.

The City of Indianapolis, Indiana, by its Board of Directors for Utilities of its Department of Utilities, hereby refuses to take over, adopt, or assume the certain lease bearing date of September 30, 1913, executed by The Indianapolis Gas Company, an Indiana corporation, to Citizens Gas Company of Indianapolis, an Indiana corporation, and recorded in the office of the Recorder of Marion County, Indiana, in Miscellaneous Record 78 at page 257 and following; rejects the assignment of said lease tendered to said City by said Citizens Gas Company of Indianapolis; and refuses to recognize said lease as an obligation of said Citizens Gas Com-

pany of Indianapolis which this City is bound to accept, or which in any respect whatsoever is one to which the property of said Citizens Gas Company of Indianapolis, when transferred to said City, is in any manner subject or which constitutes a charge thereon.

Dated at Indianapolis, Indiana, September 9, 1935.

Board of Directors for Utilities of the
City of Indianapolis, Indiana,

By
Its President.

Attest:

.....
Its Secretary.

State of Indiana, }
County of Marion. } ss.

* Before the undersigned, a Notary Public in and for said County and State, personally appeared said Henry L. Dithmer as President of the Board of Directors for Utilities of the City of Indianapolis and acknowledged the execution of the foregoing instrument as and for its and his voluntary act and deed.

.....
Notary Public.

6. That a copy of this resolution, certified by the Secretary of this Board, be served upon said The Indianapolis Gas Company as evidence of the attitude and intention of this Board.

7. That a copy of this resolution, certified by the Secretary of this Board, and a copy of said "Rejection of Assignment," be served upon said Citizens Gas Company of Indianapolis as evidence of the attitude and intention of this Board.

Certificate.

The undersigned, Roy Sahm, as Secretary of the Board of Directors for Utilities of the City of Indianapolis, hereby certifies that the above and foregoing is a true and complete copy of a resolution duly adopted by said Board at a regularly held meeting on the 9th day of September 1935 as said

resolution appears in the records in the custody of the undersigned as such Secretary.

Dated at Indianapolis, Indiana, September 9, 1935.

(Signed) Roy Sahn,
*Secretary, Board of Directors for
Utilities of the City of Indian-
apolis.*

85 (Entry for June 8, 1936, continued.)

And thereupon, there issued out of the office of the Clerk of this Court a writ of subpoena in equity to the United States Marshal.

86

SUBPOENA IN EQUITY.

Filed June 8
1936.

UNITED STATES DISTRICT COURT,

Indianapolis Division,

Southern District of Indiana.

1844 Equity.

The President of the United States of America To: Citizens Gas Company of Indianapolis, a corporation, The City of Indianapolis, a municipal corporation, The Indianapolis Gas Company, a corporation, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris, and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungelaus, Roy Sahn, David J. Angus, Isaac E. Woodward and Russell J. Ryan, as members of the Board of Directors for Utilities of the City of Indianapolis, Greeting:

You are hereby commanded that all excuses and delays set aside you be and appear within twenty days after the service of this subpoena at the Clerk's office of the United States District Court for the Southern District of Indiana at Indianapolis, to answer unto the bill of complaint of The Chase National Bank of the City of New York, Trustee, in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Robert C. Baltzell, United States

District Judge at Indianapolis this 8th day of June, A. D. 1936.

Albert C. Sogemeier,
Clerk.

87 By Thelma M. Riebeling,
Deputy Clerk.

(Seal)

Memorandum.

The Defendants in this case are required to file their answer or other defense in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

88 (Marshal's Return Endorsed on Subpoena in Equity.)

I received this writ at Indianapolis, Indiana, June 9, 1936, and served the same upon the within named Citizens Gas Company of Indianapolis, a corporation, by reading the same to and within the hearing of, and by delivering a true copy of this Subpoena to Henry L. Dithmer, President of the Board of Directors of the said Citizens Gas Co., on June 10, 1936; and upon the within named The City of Indianapolis, a municipal corporation, by reading the same to and within the hearing of and by delivering a true copy of this writ to John W. Kern, Mayor of the City of Indianapolis, on June 9, 1936; and upon the within named The Indianapolis Gas Company, a corporation, by reading the same to and within the hearing of, and by delivering a true copy of this writ to Arthur V. Brown, Vice President of said company, he being the highest officer of said company found in my district, on June 9, 1936; and upon the within named William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glosbrenner, Edward W. Harris and Charles S. Raugh, as members of the Board of Trustees for Utilities of the City of Indianapolis, by reading the same to and within the hearing of and by delivering a true copy of this writ to each of them, on June 9, 1936; and upon the within named Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungelaus, Roy Sahn, David J. Angus, Russell J. Ryan, by reading the same to

89 and within the hearing of, and by delivering a true copy of this writ to each of them, and Isaac E. Woodward, by leaving a true copy of this writ at his last and usual place of residence, in the hands of his wife, Ada Woodward, all as members of the Board of Directors for Utilities of the City

of Indianapolis, on June 9, 1936; all of the above services made at Indianapolis, Indiana, on June 9, and 10, 1936 as indicated above.

Charles W. James,
U. S. Marshal.
By Edgar Collins,
Deputy.

Marshal's Costs:	
15 Services	\$30.00
Expense	1.16
	<hr/>
	\$31.16

90 And afterwards to wit at the April Term of said Court, on the 22nd day of June, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Comes now the plaintiff, by its solicitors, and files praecipe for alias subpoena for the defendant Citizens Gas Company, which praecipe is as follows:

(H. I)

And thereupon, there issued out of the office of the Clerk of this Court a writ of subpoena in equity to the United States Marshal.

91 ALIAS SUBPOENA IN EQUITY. >

UNITED STATES DISTRICT COURT,

Indianapolis Division,

Southern District of Indiana.

The President of the United States of America To Citizens Gas Company of Indianapolis, a corporation, Greeting:

You Are Hereby Commanded that all excuses and delays set aside you be and appear within twenty days after the service of this subpoena at the Clerk's office of the United States District Court for the Southern District of Indiana, at Indianapolis to answer unto the bill of complaint of The

Marshal's Return.

Chase National Bank of the City of New York, Trustee, in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Robert C. Baltzell, United States District Judge at Indianapolis this 22nd day of June, A. D. 1936.

Albert C. Sogemeier,
Clerk.

By Thelma M. Riebeling,
Deputy Clerk.

(Seal)

Memorandum.

The Defendant in this case is required to file its answer or other defense in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

(Endorsed): Marshal's Civil Docket No. 8147. United States District Court. * * (Caption—1844) * * Subpoena in Equity. Returnable on the 20th day after service. William L. Taylor, State Life Bldg., Indpls. Solicitor for Plaintiff.

92 (Marshal's Return Endorsed on Subpoena in Equity)

Southern District)
of Indiana, { ss:

Received the within writ on the 29th day of June, 1936, and executed same upon the within named Citizens Gas Company of Indianapolis, a corporation, by reading the same to and within the hearing of, and by delivering a true copy of this writ to Gustave A. Efromyson, president of said company, at Indianapolis, Indiana, June 29, 1936.

Charles W. James,
U. S. Marshal.
By Edgar Collins,
Deputy Marshal.

Marshal's Costs:

1 Services	\$2.00
Expense	.14
	<hr/>
	\$2.14

93 And afterwards to wit at the April Term of said Court, on the 1st day of October, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Comes now the defendant The Indianapolis Gas Company, by Louis B. Ewbank, and William R. Higgins its solicitors, and files appearance, which is as follows:

(H. I.)

And said defendant The Indianapolis Gas Company now files answer, which is as follows:

94 IN THE DISTRICT COURT OF THE UNITED STATES.

Filed Oct. 1,
1936.

* * (Caption—1844) * *

SEPARATE ANSWER OF DEFENDANT, THE INDIANAPOLIS GAS COMPANY, TO THE BILL OF COMPLAINT.

Comes now The Indianapolis Gas Company, a defendant in the above entitled cause, and for its separate answer to the Bill of Complaint therein respectfully states that:

1. Answering the first paragraph of the Bill, it admits the allegations therein set out.

2. Answering the second paragraph of the Bill, it admits the allegations therein set out.

3. Answering the third paragraph of the Bill, it admits the allegations therein set out.

4. Answering the fourth paragraph of the Bill, it admits the allegations therein set out.

5. Answering the fifth paragraph of the Bill, its admits the allegations therein set out.

6. Answering the sixth paragraph of the Bill, its admits the allegations therein set out.

7. Answering the seventh paragraph of the Bill, it admits the allegations therein set out.

95 8. Answering the eighth paragraph of the Bill, it admits the allegations therein set out.

9. Answering the ninth paragraph of the Bill, it admits the allegations therein set out.

10. Answering the tenth paragraph of the Bill, this de-

fendant admits that at the time of the execution of said ninety-nine year lease its first mortgage bonds in the principal amount of \$4,833,000 had been and were issued and outstanding and that subsequent to the execution of said lease, and during the operation of its property thereunder by defendant, the Citizens Gas Company of Indianapolis, additional bonds in the principal amount of \$2,048,000 were authenticated by the Trustee and delivered by this defendant to defendant, Citizens Gas Company of Indianapolis, to reimburse said latter company for capital expenditures made upon this defendant's property. This defendant denies any knowledge or information sufficient to make answer to the allegation in this paragraph of the Bill, that its bonds sold subsequent to the execution of said lease were sold in reliance upon the validity and effect of the said lease.

11. Answering paragraph eleven, this defendant admits the allegation therein contains.

12. Answering paragraph twelve, this defendant admits the allegation therein contained.

13. Answering paragraph thirteen, this defendant admits the allegation therein contained.

14. Answering paragraph fourteen, this defendant admits the allegation therein contained.

15. Answering paragraph fifteen, this defendant admits the allegation therein contained.

16. Answering paragraph sixteen, this defendant admits the allegation therein contained.

17. Answering paragraph seventeen, this defendant admits the allegation therein contained.

18. Answering paragraph eighteen, this defendant admits the allegation therein contained.

19. Answering paragraph nineteen, this defendant admits the allegation therein contained.

20. In answering paragraphs twenty and twenty-one of the Bill, this defendant denies that it has ever contended or admitted that the said ninety-nine year lease was not and is not a valid and binding obligation upon this defendant, and defendants, The Citizens Gas Company of Indianapolis, and the City of Indianapolis as assignee and successor in trust to said latter company.

21. Answering paragraph twenty-two of the Bill, this defendant says that it is not sufficiently informed concerning what is alleged in said paragraph to make answer thereto.

22. Answering the twenty-third paragraph of the Bill, this defendant admits the defendant, City of Indianapolis, through its Department of Utilities, has denied any liability and obligation as assignee and successor to the Citizens Gas Company of Indianapolis, under the terms and provisions of said ninety-nine year lease, and did so notify this defendant by letter. This defendant further admits that it undertook with defendant, City of Indianapolis through its Department of Utilities, negotiations looking to a settlement of the controversy concerning the use of its said property covered by said lease, but it denies that it at any time abandoned or waived or negotiated to abandon or waive any rights which at law or in equity belong to this plaintiff or the trust which it represents, or to affect them in any way unless with the full consent of plaintiff and the bondholders for which it is trustee.

23. Answering the twenty-fourth paragraph of the Bill, this defendant admits the execution of an agreement with the City of Indianapolis providing that if said City through its Department of Utilities continued the operations of this defendant's property pending the settlement of the controversy as to the said City's obligations as assignee and successor to the Citizens Gas Company of Indianapolis under said ninety-nine years lease, and should deposit certain funds in the Indiana National Bank, it should not thereby waive any right it might have to deny that said lease is
97 an obligation binding upon it, if such rights there be, substantially as alleged in said paragraph of the Bill; but it denies that in so doing it gave any consent to the withholding of payment of any interest on any bonds, or deprived or agreed to the deprivation of this plaintiff, or the holders of bonds for whom it is suing, of any valuable property right or security underlying said bonds. This defendant further says that said agreement, providing that no waiver of any rights by any party thereto should result from such operation of the defendant's property, was entered into by it to prevent a failure and break-down of public service in the furnishing and distribution of gas to the citizens and gas users of the City of Indianapolis, which in the then belief of this defendant appeared to be otherwise imminent and unavoidable. By the terms of said agreement all rights under and pursuant to the terms and provisions of said ninety-nine year lease, which properly belong to this plaintiff as Trustee under said Mortgage Deed of Trust, this defendant believes

and therefore avers so far as could be done if said purpose to avert a break-down of said public service be accomplished were expressly reserved and protected.

24. Answering the twenty-fifth paragraph of the Bill, this defendant denies that it is now negotiating with defendant, City of Indianapolis, for the use of its property by said City under any agreement, lease or arrangement which deprives or would deprive this plaintiff or the holders of this defendant's outstanding bonds of any rights or privileges which either at law or in equity properly inure to them by the terms and provisions of said Mortgage Deed of Trust. This defendant has at all times and does now, admit the obligation and liability of its entire property, both real and personal, to the performance of the terms and provisions of the said Mortgage Deed of Trust, and this obligation and liability it has never at any time denied or sought to evade by any agreement with any co-defendant in this cause, nor does it do so now.

98 25. This defendant denies each and every allegation in the Bill not hereinabove admitted, controverted or specifically denied.

Wherefore this defendant denies that the plaintiff is entitled to the relief prayed for in the Bill of Complaint against this defendant, and prays that as to it the Bill of Complaint be dismissed with costs.

The Indianapolis Gas Company,
By Louis B. Ewbank (Seal)
Wm. R. Higgins (Seal)
Its Attorneys.

99 (Entry for October 1, 1936, continued)

Come now the defendants City of Indianapolis, *et al.*, by their solicitors, and file answer and counter-claim, which are as follows:

100 IN THE DISTRICT COURT OF THE UNITED STATES.

Filed Oct
1936.

* * (Caption-1844) * *

Separate and Several Answer and Counter-Claim of Defendants the City of Indianapolis, a Municipal Corporation, William J. Mooney, A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as Members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungelaus, Roy Sahn, David J. Angus, Isaac E. Woodward and Russell J. Ryan, as Members of the Board of Directors for Utilities of the City of Indianapolis.

James E. Deery,
Corporation Counsel,
City Hall, Indianapolis, Indiana,
William H. Thompson,
Albert L. Rabb,
Thomas D. Stevenson,
1350 Consolidated Building,
Indianapolis, Indiana.
Solicitors for Said Answering Defendants.

101 * * (Caption—1844) * *

The City of Indianapolis, a municipal corporation; William J. Mooney, A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as Members of the Board of Trustees for Utilities of the City of Indianapolis; Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungelaus, Roy Sahn, David J. Angus, Isaac E. Woodward and Russell J. Ryan, as Members of the Board of Directors for Utilities of the City of Indianapolis, defendants in the above entitled cause, for their separate and several answer to the plaintiff's bill of complaint and by way of counter-claim say:

1. These answering defendants admit all of the averments contained in subdivision 1 of plaintiff's bill of complaint.

2. These answering defendants admit the averments contained in subdivision 2 of plaintiff's bill of complaint that jurisdiction is sought to be asserted in this cause on the ground of diversity of citizenship between the plaintiff and all of the

defendants; that this cause is of a civil nature and that the matter in controversy herein, exceeds, exclusive of interest and costs, the sum or value of \$3,000; but these answering defendants aver on information and belief that this action is a collusive one in which jurisdiction is sought to be conferred upon this court over a controversy existing solely between the defendant The Indianapolis Gas Company, an Indiana corporation, and a citizen and resident of the Southern District of Indiana, Indianapolis Division, and these answering defendants, all of whom are citizens and residents of said Southern District of Indiana, Indianapolis Division, which is a controversy over which this Court has no jurisdiction, by reason of diversity of citizenship or otherwise, all as hereinafter in Subdivision 26 of this answer more particularly averred.

3. These answering defendants admit the averments 102 contained in subdivision 3 of plaintiff's bill of complaint

that the plaintiff is Trustee under a deed of trust executed on the 1st day of October, 1902, by defendant The Indianapolis Gas Company, to secure the payment of the principal and interest of certain first mortgage bonds of said The Indianapolis Gas Company, but deny that the plaintiff has any right to maintain this suit as trustee for the reasons hereinafter in subdivision 26 of this answer more particularly averred.

These answering defendants deny, on information and belief, that this suit is brought by plaintiff as Trustee for and on behalf of the stockholders and owners of said bonds and pursuant to the rights granted to the original Trustees and their successor or successors under said deed of trust.

These answering defendants have no knowledge as to whether this suit was commenced and is attempted to be prosecuted at the special instance and request of the owners and holders of \$415,000 in principal amount of said bonds and neither admit nor deny said averments, but request that plaintiff be required to make strict proof thereof; but these answering defendants aver on information and belief that if said request was made it was a part of a collusive arrangement to attempt to confer jurisdiction on this Court which did not otherwise exist, all as hereinafter in subdivision 26 of this answer more particularly averred.

These answering defendants admit that the plaintiff seeks a declaratory judgment of this Court to determine and fix the rights of the plaintiff as mortgagee and as Trustee and

to determine the rights of the plaintiff and the obligations of the several defendants under or growing out of a certain lease executed on the 30th day of September, 1913, by and between the defendants, The Indianapolis Gas Company and Citizens Gas Company of Indianapolis, a copy of which lease marked Exhibit B is made a part of plaintiff's bill of complaint and admit that the plaintiff seeks further relief by way of injunction; but these defendants deny on information and belief that the plaintiff has any right to maintain such an action, deny that it is entitled to any relief whatever, and deny that there is any necessity for injunctive relief to preserve or protect the property and corpus of said trust, to prevent loss, waste and damage to the same or to prevent irreparable loss and damage to the holders of said bonds.

These answering defendants admit that a real and actual controversy exists as to the binding force and effect of said lease of September 30, 1913, but they allege:

(a) That such controversy exists between these answering defendants and The Indianapolis Gas Company, an Indiana corporation, and aver that the plaintiff has no legal interest in or right to be heard in connection with such controversy; and

(b) That such controversy exists only as to the binding force and effect of said lease of September 30, 1913, upon these answering defendants after the transfer of the property and assets formerly held by the Citizens Gas Company as Trustee of a public charitable trust to the City of Indianapolis as the successor Trustee of said trust, which transfer was made on September 9, 1935, and allege that as to these defendants, no controversy ever existed as to the binding force and effect of said lease for and during the term of trusteeship of said Citizens Gas Company.

These answering defendants deny on information and belief that the plaintiff has no plain, complete or adequate remedy at law and that adequate relief can be administered only in a Court of Equity, but aver that the plaintiff is not entitled to any relief either at law or in equity in connection with this controversy and has no standing to maintain this action.

4. These answering defendants admit the averments contained in subdivision 4 of plaintiff's bill of complaint.

5. These answering defendants admit the averments contained in subdivision 5 of plaintiff's bill of complaint, but in that connection allege:

That the Citizens Gas Company of Indianapolis was not the

owner in its individual right of the property used by it in the manufacture and distribution of gas to the inhabitants of Indianapolis, but was merely the Trustee of a public charitable trust; that the instruments creating that trust, including the franchise, articles of incorporation and by-laws of said Citizen Gas Company of Indianapolis, are made a part of plaintiff's bill of complaint, identified as Exhibit C and are by reference made a part of this answer.

These answering defendants aver on information and belief that prior to the 30th day of September, 1913, the plaintiff as trustee, and defendant The Indianapolis Gas Company, either had actual knowledge of, or were bound in law by knowledge of, the following facts in connection with the Citizens Gas Company and its affairs:

First. Of the provisions of the ordinance of the City of Indianapolis approved August 30, 1905, whereby a franchise was granted to certain individuals therein named on the condition that they should organize a corporation to carry out the purposes of said franchise.

Second. Of the assignment of said franchise made by the individual grantees thereof to the Citizens Gas Company on May 24, 1906.

Third. Of the Articles of Incorporation of the Citizens Gas Company of Indianapolis which were adopted on May 23, 1906.

Fourth. Of the by-laws of the Citizens Gas Company approved January 13, 1908.

Fifth. Of all amendments made to said by-laws prior to September 30, 1913.

Sixth. Of an additional ordinance of the City of Indianapolis approved May 22, 1912.

Seventh. That the Citizens Gas Company was the initial Trustee named in said franchise contract and that at the end of the period of said franchise and, to wit: on the 30th day of August, 1930, was obligated, when the conditions fixed in the franchise contract precedent to the transfer had been complied with, to transfer the property operated by it as Trustee in the manufacture and distribution of gas to the City of Indianapolis and that all rights of the Citizens Gas Company as such Trustee would terminate approximately 77 years before the expiration of said 99 year lease.

104 These answering defendants further aver that at the time of the execution of said lease of September 30, 1913, substantial doubt existed as to the right of the Citizens Gas

Company of Indianapolis to execute a lease which would be binding beyond the term for which it was to operate said property as Trustee and that in recognition of such doubt there was inserted in said lease of September 30, 1913, the following provision:

"In the event it should be determined by a court of final jurisdiction that this contract is ultra vires or void because of the length of the term created, and that such term is in excess of the authority of either party hereto to contract, then this lease shall nevertheless be binding upon the parties hereto for the lengthiest term which the parties hereto might lawfully contract."

These answering defendants aver on information and belief that the above quoted provision was inserted in said lease at the request of defendant The Indianapolis Gas Company, and was drafted and phrased by its then counsel, Ferdinand Winter.

These answering defendants aver that such provision constituted notice to the plaintiff's predecessor trustee, to plaintiff and to each owner and holder of the stock and bonds of said The Indianapolis Gas Company, whether issued or purchased before or after September 30, 1913, that a doubt existed as to the right of the Citizens Gas Company to enter into a lease with The Indianapolis Gas Company beyond the term of the franchise hereinbefore referred to approved by the Common Council of the City of Indianapolis on August 30, 1905; and that neither the plaintiff, nor The Indianapolis Gas Company, nor any owner of the bonds or stock of The Indianapolis Gas Company can in equity be permitted to assert that it or he acquired rights without knowledge that a serious doubt existed as to the validity and binding effect of said lease after the transfer of said trust property to the said City as successor trustee, upon the City of Indianapolis as such or as Trustee, or upon the beneficiaries of said Public Charitable Trust which consist of the present and prospective users of gas in the City of Indianapolis.

That said lease of September 30, 1913, while containing all of the provisions averred in the fifth paragraph of the plaintiff's bill of complaint also contains many other conditions burdensome in character and said lease although conceded for the purpose of this litigation to be valid for the period of said franchise contract and until the property for which the Citizens Gas Company was Trustee was conveyed to the City

of Indianapolis as Trustee was ultra vires, invalid and void after the expiration of the term of the trusteeship of the Citizens Gas Company and the time necessary to transfer said property to the City of Indianapolis as successor trustee for the specific reasons and on the specific grounds hereinafter in Subdivision 27 of this answer more particularly set forth.

6. These answering defendants admit the averments contained in the first two literary paragraphs of subdivision 6 of plaintiff's bill of complaint.

These answering defendants deny that the Citizens Gas

Company of Indianapolis has at all times continued to exist and operate under the provisions of its franchise and its Articles of Association which embodied the terms of said franchise but allege the facts to be as follows:

(a) That from the date of the organization of said Citizens Gas Company it continued to exist and operate under the terms of said franchise until August 27, 1921, at which time, pursuant to the terms of an Indiana Statute Authorizing it so to do, it filed its declaration of surrender of said franchise and accepted an indeterminate permit with the result that from said date until September 9, 1935, it continued to operate as a public utility under an indeterminate permit, but that said indeterminate permit did not have the effect of modifying or rendering nugatory the terms of said franchise contract insofar as they created said Public Charitable Trust and defined the terms and conditions thereof, the rights, duties and liabilities of the Citizens Gas Company as original Trustee of the City of Indianapolis as Successor Trustee and of the present and prospective gas consumers of Indianapolis as the beneficiaries of said trust.

(b) That on the 9th day of September, 1935, the Citizens Gas Company of Indianapolis transferred its gas producing and distributing plant to the City of Indianapolis and thereupon ceased to be Trustee of said Public Charitable Trust and has not at any time since said date had any rights, powers, duties or responsibilities as such Trustee.

(c) That under the terms and provisions of subdivision (g) of said franchise contract approved by the Common Council of the City of Indianapolis August 30, 1905, the duty now rests upon said Citizens Gas Company to wind up its corporate affairs and dissolve and although steps have not been taken for this purpose, the Citizens Gas Company of Indianapolis is legally bound and obligated voluntarily to dissolve

its corporate existence and has not right to continue such existence beyond the time reasonably necessary for the purpose of winding up its affairs, all of which can properly and lawfully be done within one year from this date.

These answering defendants admit that the Articles of Incorporation of the Citizens Gas Company of Indianapolis were amended on August 27, 1921, and that by such amendment the authorized stock of the Company was increased to \$4,000,000, of which \$2,000,000 was to be common stock and \$2,000,000 preferred stock, but they deny that the Articles of Incorporation of the Citizens Gas Company were ever amended so as to permit the issuance of mortgage bonds by said corporation.

These answering defendants aver that the Citizens Gas Company of Indianapolis issued its first mortgage bonds under a mortgage or deed of trust dated July 1, 1912, and that on September 9, 1935, there were outstanding in the hands of the public \$2,745,000 par value of said mortgage bonds which had been issued not only without any authority having been granted so to do by its Articles of Incorporation but in violation of the express provisions of subdivision (i) of the franchise contract adopted by the City of Indianapolis which required that upon the expiration of the franchise period that if the term thereof should terminate without the payment of the certificates of beneficial interest together with dividends thereon at the rate of ten per cent per annum the Board of Directors of the Citizens Gas Company

"shall mortgage its gas plant and property for such sum as to enable it to pay its stock or certificate holders an amount which with what has already been paid will equal the full amount of such subscription with dividends estimated at the rate of ten per cent per annum thereon and with the proceeds thereof, or with the mortgage notes so issued in proper amounts, pay off and discharge the amounts due such certificate holders and convey said plant to said City subject to such obligations and other legal obligations against said Company; provided, however, that by the terms of said mortgage such obligation shall bear interest not exceeding six per cent per annum and be payable on or before 10 years from date of execution."

That said provision above quoted was intended to insure the payment of the certificates of beneficial interest issued

by the Voting Trustees of the Citizens Gas Company and to enable the City of Indianapolis to pay off the precedent obligations against said trust property at the date of the expiration of the franchise contract.

That on August 30, 1930, when said franchise contract expired by its terms said precedent obligations of the Citizens Gas Company had not been discharged and there was due thereon at that time to the owners of preferred stock and to the certificate holders of said Citizens Gas Company a sum of approximately \$3,500,000.

That the mortgage so executed by the Citizens Gas Company and the bonds issued thereunder were void and unenforceable as such because they were issued without proper corporate authority and in direct violation of controlling provisions of the franchise contract and said public charitable trust; that these answering defendants were advised by counsel that because the moneys obtained from the sale of said bonds were used for the benefit of the Citizens Gas Company and for the purchase of property which was added to its plant an equitable lien was thereby created on the plant and property for which the Citizens Gas Company was Trustee and as a result thereof the City of Indianapolis has paid on account thereof the principal on said bonds with interest to September 15, 1935, and not thereafter, on all of said \$2,745,000 face value of bonds except \$44,000, which have not yet been presented for payment and holds itself ready to pay the remainder of said bonds with interest to September 15, 1935, upon surrender of the same.

These answering defendants admit that all the rights, property and assets acquired by the Citizens Gas Company of Indianapolis were acquired by it as Trustee for the benefit of the present and prospective users of the City of Indianapolis, but deny that the trust is for the benefit of all of the inhabitants of Indianapolis; they further admit that said trust property was acquired subject to a charge in favor of the stockholders, creditors and other persons having valid claims and rights against the property of said trust and admit that from the time of the creation of said Citizens Gas Company to September 9, 1935, said Company was the Trustee of
107 a public charitable trust for the benefit of those inhabitants of the City of Indianapolis who were or might become gas users; said trust being subject only to such charges in favor of stockholders and creditors as hereinbefore referred to.

7. These answering defendants admit the averments contained in Subdivisions 7 and 8 of the plaintiff's bill of complaint except that they:

(a) Deny that the Public Service Commission of Indiana either directly or indirectly attempted to approve or did approve the lease of September 30, 1913, executed between The Citizens Gas Company of Indianapolis and The Indianapolis Gas Company as valid and binding upon the City of Indianapolis after the property operated by the Citizens Gas Company should have been transferred to the City of Indianapolis in accordance with the terms of the franchise contract and public charitable trust above referred to.

(b) Deny that the Citizens Gas Company of Indianapolis was made a party to said proceedings before the Public Service Commission as Trustee of a Public Charitable Trust; and aver that all proceedings had before the Commission and the order entered by the Commission were had and conducted upon the theory that the Citizens Gas Company of Indianapolis was the owner of said property for the period of its corporate life and thereafter that the City of Indianapolis was the owner of the property.

(c) Deny that said Frank S. Fishback ever asserted any rights as the beneficiary of a Public Charitable Trust; and aver that said Fishback originally appeared in said proceedings before the Public Service Commission of Indiana solely as a stockholder of the Citizens Gas Company and a taxpayer of the City of Indianapolis.

(d) Deny that the City of Indianapolis appeared in said proceedings before the Public Service Commission as Successor Trustee of said Public Charitable Trust; and aver that no issue was presented to or heard or determined by the Public Service Commission of Indiana involving the existence of a Public Charitable Trust or the rights of the Citizens Gas Company of Indianapolis as Initial Trustee, of the City of Indianapolis as Succeeding Trustee, or of the beneficiaries of such trust consisting of the present and prospective gas consumers of Indianapolis.

8. These answering defendants aver that the approval of said lease of September 30, 1913, by the Public Service Commission of Indiana is not *res adjudicata* as to the binding effect of said lease upon these answering defendants subsequent to September 9, 1935, for each of the following reasons:

First. Said lease of September 30, 1913, which was sub-

mitted to the Commission for its approval contained in subdivision 32 thereof the provisions hereinbefore in subdivision 5 of this answer set out were to the general effect that if for any reason the lease was ultra vires or void because of the length of the term created and in excess of the authority of either party to said lease, then that the lease should be binding for the term for which the parties might lawfully contract. The effect of the approval of the Public Service Commission of the lease under the law of Indiana could
108 and did extend no further than the approval of such lease for the period of time for which the parties might lawfully contract.

Second. The statutes of Indiana existing and in effect on September 30, 1913, did not attempt to confer any judicial power upon the Public Service Commission of this State. Under the provisions of the Constitution of Indiana and particularly Section 1 of Article III thereof, which was in force on September 30, 1913, and continuously since that date, the powers of Government are divided into three separate departments, the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments has any power to exercise any of the functions of another such department. Under said constitutional provisions the Public Service Commission of Indiana could not lawfully be granted any judicial power and was without authority to hear, determine or decide justiciable controversies. That the question of whether a Public Charitable Trust existed in the property operated by the Citizens Gas Company of Indianapolis and the further question as to whether the Trustee of such a Public Charitable Trust had the right to become the Lessee in a lease extending for approximately 77 years after the termination of its trusteeship, which lease contained onerous and burdensome conditions, were judicial questions which under the Statutes and Constitution of the State of Indiana the Public Service Commission of Indiana was without authority to hear and determine; and its approval of said lease of September 30, 1913, did not and could not adjudicate either or both of said questions.

Third. At the time said Public Service Commission of Indiana approved said lease of September 30, 1913, the Citizens Gas Company of Indianapolis was operating the gas manufacturing and distributing plant for which it was the

Trustee and it was not for more than twenty years thereafter that said property was conveyed to the City of Indianapolis as Successor Trustee. Any attempt on the part of the Public Service Commission of Indiana to hear, determine or adjudicate the validity of said lease of September 30, 1913, after the property of said Public Charitable Trust should have been transferred to the City of Indianapolis as Successor Trustee was without any legal or binding force whatever and could not operate as an estoppel or *res adjudicata*.

Fourth. The Public Service Commission of Indiana under the Statutes and Constitution of this State is purely an administrative body with no authority to hear, determine or decide justiciable controversies and its act and order approving said lease of September 30, 1913, amounted to no more than its determination that the terms of the lease were at that time in its opinion advantageous and the approval of said Public Service Commission thereto should be given and said order of the Public Service Commission has no further or different legal effect.

9. These answering defendants admit the averments contained in subdivision 9 of the plaintiff's bill of complaint, but in connection therewith aver:

(a) That in said action commenced by the said Frank S. Fishback in the Superior Court of Marion County, Indiana, such steps were taken as that a judgment was entered against him by said Superior Court in said cause on the 15th day of February, 1921, and that the appeal prosecuted therefrom to the Supreme Court of Indiana by the said Fishback was dismissed on the 8th day of March, 1923.

(b) That the Citizens Gas Company was made a party defendant to such litigation not as a Trustee, but in its individual capacity and that no claim was made or asserted in such litigation that the property held and operated by the Citizens Gas Company was that of a Public Charitable Trust.

(c) That the City of Indianapolis was made a party defendant to said suit individually and not as Trustee.

These answering defendants aver that the judgment, order and decree of the Marion Superior Court in the case of Frank S. Fishback *vs.* The Public Service Commission of Indiana, referred to in subdivision 9 of the plaintiff's bill of complaint is not *res adjudicata* and does not prevent consideration of any question involved in this cause against these defendants, for each of the following reasons:

First. Under the Statutes in effect at the time of the c.

mencement of said action and continuously thereafter until the appeal of Fishback was dismissed by the Supreme Court of Indiana no appeal could be taken from any order of the Public Service Commission of Indiana except from an order fixing rates or regulations, practices, acts or service; that the action commenced by Fishback and prosecuted by him in said Superior Court of Marion County, Indiana, was not an appeal under a statute but was a suit in equity to set aside and vacate in its entirety the order entered by the Public Service Commission of Indiana in approving said lease of September 29, 1913; that the sole question which could be lawfully heard and adjudicated by the Court in such action was whether said order of the Public Service Commission was valid or invalid; that inasmuch, as heretofore averred, the Public Service Commission could exercise no judicial power and had no authority to determine or adjudicate the validity of said lease, the Superior Court of Marion County, in the case commenced and maintained by the said Fishback, could not adjudicate or determine the validity of said lease.

Second. The cause of action in the Fishback case and the cause of action in this case are essentially different in that in the Fishback case the sole question involved was whether the administrative order of the Public Service Commission approving the lease was valid or invalid, while here, the question involved is the binding effect of such lease on these answering defendants subsequent to September 9, 1935, on which date the property formerly operated by the Citizens Gas Company as Trustee was transferred to the City of Indianapolis as Successor Trustee. Inasmuch as the causes of action are different, the Fishback decree cannot be res adjudicata of any questions except those actually litigated therein and these answering defendants aver that none of the questions involved in this case were litigated or decided in the Fishback case.

110 Third. At the date of the rendition of the judgment of the Marion Superior Court in the Fishback case and at the time Fishback's appeal was dismissed by the Supreme Court of Indiana there was not in effect in the State of Indiana any declaratory judgment statute and the Superior Court was without power to determine or decide questions which might arise in the future, but which had not then arisen, that is to say, the binding effect of said lease of September 30, 1913, against these answering defendants subsequent to

the date of the transfer of the trust property to the City of Indianapolis as Successor Trustee.

Fourth. That in said Fishback case it was pointed out to the Court in the demurrer of the defendant therein filed to the sixth paragraph of plaintiff's complaint, in referring to the lease of September 30, 1913, between the Citizens Gas Company and The Indianapolis Gas Company, that "the lease set out in the complaint itself provides that if for any reason the lease should be held to be for too long a term it should be valid for such length of time as a lease could lawfully be made." That said Fishback case was heard and determined on the theory that whether the said lease was valid for its entire term or not, the action of the Public Service Commission in approving the same could not be vacated or set aside.

Fifth. That the estoppel of the Fishback judgment in law extends only to facts in issue as they existed at the time judgment was rendered and does not prevent a re-examination of the same questions between the same parties where in the interval the facts have changed or new facts have occurred which may alter the legal rights or relations of the parties thereto; that since the judgment and decree in the Fishback case facts have occurred which alter the rights and relations of the parties hereto, to wit: the transfer of the trust property to the City of Indianapolis as Successor Trustee on September 9, 1935, and the judgment and decree rendered in the Fishback case is therefore not determinative of the rights of the parties thereto as of this date.

Sixth. That in said Fishback case both the City of Indianapolis and The Indianapolis Gas Company were defendants, but on the pleadings in that case no issue was raised and none was heard or determined as between the said defendants involving the validity of said lease of September 30, 1913.

Seventh. That in said Fishback case all of the defendants thereto were sued in their individual capacities and not as Trustees and no issue was heard, determined or decided by the Court involving the existence of said Public Charitable Trust or the effect of that legal status upon the validity of the lease of September 30, 1913, upon the City of Indianapolis as Successor Trustee or upon the beneficiaries of said trust.

10. These answering defendants admit the averments of

subdivision 10 of the plaintiff's bill of complaint that at the date of the execution and delivery of said 99 year lease, \$4,833,000 total face amount of The Indianapolis Gas Company first mortgage bonds had been issued and were outstanding; but allege that all of these bonds had been sold prior to the execution of said lease and without any knowledge or belief upon the part of the purchasers that such a lease would be executed.

These answering defendants further admit that subsequent to the time of such approval, upon the request of The Indianapolis Gas Company, additional bonds in the principal sum of \$2,048,000 were authenticated by the Trustee and were delivered by The Indianapolis Gas Company to the Citizens Gas Company of Indianapolis, pursuant to the provision of said lease, for the purpose of reimbursing said Citizens Gas Company for capital expenditures on account of extensions and betterments to the plant and system of The Indianapolis Gas Company theretofore made by the Citizens Gas Company as Lessee, all or substantially all of which bonds were sold by the Citizens Gas Company as provided in said lease. But these answering defendants aver that the Citizens Gas Company was only reimbursed to the extent of ninety per cent of the expenditures so made by it for improvements in and additions to the property of The Indianapolis Gas Company and that the property so added to the plant of The Indianapolis Gas Company was at the time the said additions were made reasonably worth the entire respective sums expended therefor by the Citizens Gas Company.

These answering defendants admit that said additional bonds were sold and distributed, but how widely they do not know. They deny that said bonds were acquired and purchased in reliance upon the proposition that they were secured by a valid and enforceable 99 year lease to a responsible corporation and that said corporation, its successors and assigns were legally obligated to pay the interest thereon as a part of the rental under said lease, or that the validity of said lease had been judicially and finally determined by the Public Service Commission of Indiana and by the courts of Indiana.

On the contrary, these answering defendants aver that at the time said additional bonds aggregating \$2,048,000 were sold and delivered the purchasers thereof were charged with notice by reason of the provisions of said lease of September

30, 1913, and particularly subdivision 32 thereof hereinbefore in subdivision 5 of this answer set out in full, that a serious doubt existed as to the validity and enforceability of said lease after the expiration of said franchise contract and that such purchasers purchased and acquired said bonds, not only without any belief in or reliance upon the fact that said 99 year lease was legally enforceable but charged with notice as to the probable invalidity thereof after the transfer of the trust property to the City of Indianapolis as Successor Trustee and that said bondholders cannot now be heard to assert that these answering defendants are thereby estopped to contest the validity of said lease subsequent to September 9, 1935.

These answering defendants further aver that the said lease executed by The Indianapolis Gas Company to Citizens Gas Company of Indianapolis under date of September 30, 1913, was on or about such date recorded in the office of the Recorder of Marion County, Indiana, in Miscellaneous Record 78 and page 257 and following of the records in such office; such recordation being in the time and manner required by law for notice to all concerned of the existence and contents of such lease.

112 That as hereinbefore averred the validity of said lease after the expiration of the term of the trusteeship of the Citizens Gas Company had never been determined by the Public Service Commission of Indiana or the Courts of Indiana either by administrative order or judicial decree and said bondholders could not have relied upon any such order or decree.

11. With respect to subdivision 11 of the bill of complaint, these answering defendants admit that the plant and property of The Indianapolis Gas Company was operated by the Citizens Gas Company of Indianapolis from November 28, 1913, until September 9, 1935, when possession thereof was delivered to the City of Indianapolis, but aver that the operation by the Citizens Gas Company was as the Trustee of a Public Charitable Trust. They further admit that the operation referred to was under the terms of said lease of September 30, 1913, but for the reasons hereinafter in subdivision 27 hereof more specifically stated, they deny that said lease was valid for the full term of 99 years, and aver that it was only valid, if at all, only until the expiration of said franchise contract and until the trust property was conveyed by the

Citizens Gas Company to the City of Indianapolis as Successor Trustee.

These answering defendants admit that the Citizens Gas Company of Indianapolis accepted and enjoyed the use of the property granted under said lease of September 30, 1913; admit that it was thereby relieved from the waste and expense of competition, but deny that it was relieved of the duplication of facilities; admit that it has operated and maintained the leased plant and property as a unified part of its plant and system; but in this connection the answering defendants aver that in such operation the Citizens Gas Company was acting solely as the trustee of a Public Charitable Trust.

These answering defendants further aver that The Indianapolis Gas Company has during all of said time received the rentals due it under the terms of said lease; that the Citizens Gas Company of Indianapolis has paid all taxes in connection therewith and all other burdens imposed upon it by the terms of said lease, and that the payments so made to or in behalf of The Indianapolis Gas Company during the period from 1913 to 1935, inclusive, were as follows:

CITIZENS GAS CO., LESSEE - INDIANAPOLIS GAS CO., LESSOR
Summarized Statement of the Cost to the Lessee, of Carrying on the Lease, by Years and in Total, from the
Beginning Date to Dec. 31, 1935

Period	Bond Interest	Stock Dividends	Taxes	Corporate Organiza- tion Maint. Fee	Cost of Obtaining the Lease	Discount on Bonds Sold	Interest During Construction	Total Cost
10-1-13 to 12-31-13		\$ 30,000.00	\$ 40,542.96	\$ 75.00	\$56,996.29		\$ 212.00	\$ 127,829.25
Calendar Years: 1914	\$ 243,475.00	120,000.00	52,902.33	300.00			3,682.00	420,519.33
1915	252,075.00	120,000.00	58,113.44	300.00			1,983.03	450,401.44
1916	253,650.00	120,000.00	71,232.44	300.00		17,930.00	3,172.00	448,354.44
1917	253,650.00	120,000.00	72,634.60	300.00			3,027.00	449,611.60
1918	253,650.00	120,000.00	79,064.35	300.00			452.00	452,562.35
1919	255,525.00	120,000.00	124,121.61	300.00		36,140.00	2,277.00	538,363.61
1920	267,550.00	120,000.00	150,735.25	300.00			2,176.00	540,761.25
1921	267,542.50	120,000.00	118,583.46	300.00			2,900.00	509,325.96
1922	274,952.29	120,000.00	121,951.07	300.00		56,975.00	2,501.00	576,679.36
1923	280,800.00	120,000.00	141,182.03	300.00			2,646.00	544,928.03
1924	280,946.81	120,000.00	154,627.30	300.00		1,200.00	6,106.00	563,180.11
1925	281,400.00	120,000.00	167,139.49	300.00		17,250.00	5,073.00	573,912.49
1926	281,996.77	120,000.00	160,523.16	300.00		930.00	4,106.00	584,272.93
1927	311,674.18	120,000.00	162,527.33	300.00			3,213.00	599,537.51
1928	311,700.00	120,000.00	165,306.70	300.00			3,951.00	600,519.70
1929	311,700.00	120,000.00	170,239.74	300.00			2,852.00	606,163.74
1930	311,700.00	120,000.00	175,461.47	300.00			487.00	610,313.47
1931	338,091.93	120,000.00	156,789.81	300.00		2,358.75	238.00	618,027.49
1932	343,150.00	120,000.00	155,326.48	300.00			137.00	619,014.48
1933	343,150.00	120,000.00	138,075.28	300.00			175.00	601,662.28
1934	343,150.00	120,000.00	120,777.11	300.00			295.00	584,402.11
1935	343,150.00	120,000.00	120,580.55	300.00				584,325.55
Totals	\$6,394,779.48	\$2,670,000.00	\$2,878,500.97	\$6,675.00	\$56,996.29	\$132,783.75	\$54,969.00	\$12,194,695.49

Summary of Costs

Bond interest	\$ 6,394,779.48
Stock dividends	2,670,000.00
All taxes	2,878,500.97
Corporate maintenance fee	6,675.00
Cost of obtaining lease	56,996.29
Discount on bonds sold	132,783.75
Interest during construction	54,969.00 (1)
Total cost	\$12,194,695.49 (2)

- (1) Calculated at 5% on average expenditures for additions and betterments to leased property.
(2) Not including the 10% differential between expenditures for additions and betterments, and bonds issued in payment therefor, which has amounted to \$219,012.

Answer and Counterclaim.

These answering defendants further admit that the City of Indianapolis and its gas consumers had the benefit and advantage of the operation of said leased property, but deny that over the period of the lease any profits have been produced thereby and deny that the Public Charitable Trust has been protected thereby. On the contrary these answering defendants aver:

(a) That the payments made to The Indianapolis Gas Company during the period of years above referred to, viz.: from 1913 to 1935 were largely in excess of the fair value of the use of said property during said time.

(b) That during many of the years referred to Citizens Gas Company was operated at a loss and one of the factors contributing materially to the existence of such loss was the excessive rental and other considerations required to be paid to and on behalf of said The Indianapolis Gas Company under the terms of said lease.

(c) That said lease is presently burdensome and not advantageous to said trust property, all as hereinafter in subdivision 27 hereof more specifically alleged.

(d) That the bondholders and stockholders of The Indianapolis Gas Company have benefited to an inequitable, unfair and unreasonable extent because of payments made to them or on their behalf under the terms of said lease.

12. These answering defendants admit the averments contained in the 12th subdivision of the plaintiff's bill of complaint, but allege in connection therewith that the Citizens Gas Company of Indianapolis by the execution of its mortgage hereinbefore described had disabled itself from performing the demand made upon it by the City of Indianapolis to mortgage its property, and that as hereinbefore averred said mortgage was invalidly executed and void but the existence of said mortgage as a practical proposition destroyed the ability of the Citizens Gas Company to provide funds for the purpose of paying off the precedent charges against said Gas Company.

13. These answering defendants admit the averments of subdivision 13 of the plaintiff's bill of complaint except they allege that it was finally adjudged and determined that the beneficiaries of said Public Charitable Trust were those inhabitants of the City of Indianapolis who were then or who might thereafter become gas users, and aver, for reasons in subdivision 20 of this answer specifically stated, that the decision in said Todd case is not res adjudicata of any question involved in this case.

14. These answering defendants admit that as alleged in subdivision 14 of the plaintiff's bill of complaint one Allen G. Williams brought suit as an inhabitant and taxpayer on behalf of himself and other resident taxpayers of the City of Indianapolis in the Superior Court of Marion County, Indiana, and aver that the complaint in that case alleged the following:

(a) That a Public Charitable Trust existed in the property of the Citizens Gas Company of Indianapolis and that the plaintiff was entitled to a determination that such a trust existed.

(b) That a conspiracy was formed in 1913 to destroy said Public Charitable Trust and among the overt acts of said conspiracy were procuring the enactment of the Public Service Commission Act of Indiana, the approval by that Commission of the lease between The Indianapolis Gas Company and the Citizens Gas Company, the surrender by the Citizens Gas Company of its franchise and the acceptance of an indeterminate permit and the obtaining of a decree from the United States District Court at Indianapolis by the Citizens Gas Company enjoining the enforcement of confiscatory rates.

(c) That the lease between the two companies was void because:

First. It was in contravention of a contract clause of the Federal Constitution.

Second. That inasmuch as the Public Service Commission Act was invalid it had no authority to approve the lease and its approval was a denial of due process in violation of the fourteenth Amendment to the Constitution of the United States.

Third. That the lease was executed as the result of a conspiracy, the object and purpose of which was to destroy the Citizens Gas Company for the benefit of The Indianapolis Gas Company.

These answering defendants admit that the complaint in said Williams case also sought the appointment of a receiver

to administer said trust and that the defendants hereto,

115 the City of Indianapolis, the Citizens Gas Company of Indianapolis, The Indianapolis Gas Company and the plaintiff were made defendants in said cause of action and each of them appeared therein and filed a demurrer to the bill of complaint, which demurrer was duly sustained and final judgment rendered in favor of defendants in said cause;

and further admit that on appeal to the Supreme Court of Indiana the three contentions which are set out in subdivision 14 of the plaintiff's bill of complaint herein, were made by the plaintiff Williams, in said cause, but allege that said Williams in his complaint and in the proceedings of the Supreme Court of Indiana contended that said lease of September 30, 1913, was invalid for the reasons herein set forth and that there was not presented in the said Williams complaint nor heard, or adjudicated by the Court any issue whatever on the question of the validity of said lease, after the time of the transfer of the property of the trust to the City of Indianapolis as Successor Trustee.

These answering defendants further admit that the Supreme Court of Indiana affirmed the decision in said Williams case, but they deny that the Supreme Court determined or adjudicated the questions involved in this case as to the validity of said lease.

These answering defendants aver that although The Indianapolis Gas Company and the City of Indianapolis and the plaintiff in this cause were defendants in said Williams case, that none of said defendants presented for the determination of the Court any issue as between themselves or any of them as to the validity of said lease.

These answering defendants further aver that the City of Indianapolis filed a motion in said Williams case to strike out parts of the complaint in which appears the following statement:

"The validity of the Public Charitable Trust set up in the complaint is in no wise affected by the validity of such lease. If the lease is valid the leasehold created thereby constitutes a part of the Public Charitable Trust and is subject to be administered in the same way as property owned by the Citizens Gas Company in its own right. If for any reason the lease is invalid, it would fall without the scope of the trust."

These answering defendants aver that the decree in the Williams case is not res adjudicata as to the validity or binding effect of said lease of September 30, 1913, upon these answering defendants after the transfer of the property of the trust to the City of Indianapolis as Succeeding Trustee on September 9, 1935, for each of the following reasons:

First. The estoppel of a judgment extends only to the facts in issue as they existed at the time the judgment was rendered and does not prevent a re-examination of the same

questions between the same parties where in the interval the facts have changed or new facts have occurred which may alter the legal rights or relations of the parties. These answering defendants aver that the Williams case was heard, tried, determined and adjudicated prior to September 9, 1935, and that the facts and circumstances have been altered and changed since the date of said adjudication by reason of the transfer of the property of the trust on said last named date to the City of Indianapolis as Succeeding Trustee.

116 Second. That the cause of action involved in the Williams case was different from that involved in this case in that a taxpayer of the City of Indianapolis therein attempted to procure a determination of the invalidity of said lease on the ground that the execution of the same violated the Constitution of the United States and of the State of Indiana and the execution of the same had been obtained as the result of a conspiracy; that none of the questions involved in this cause were actually litigated in the Williams case or passed upon or determined by the Court in said case. Inasmuch as the causes of action in the two cases are not the same it is only matter which were actually determined and litigated in the Williams case which could bind any of the parties thereto and the judgment in that case is therefore not res adjudicata on the questions here involved.

Third. In the Williams case said The Indianapolis Gas Company and the City of Indianapolis were co-defendants. As heretofore alleged the causes of action in the Williams case and in this case were different. No issue was presented for determination or adjudicated in said Williams case as between the co-defendants thereto and under such circumstances the estoppel of the Williams' judgment is applicable only as between those who were adverse parties in that case.

15.* These answering defendants admit the averments of subdivision 15 of plaintiff's bill of complaint in the year 1935 the defendant, City of Indianapolis, offered for sale and sold \$8,000,000 aggregate face amount of the City of Indianapolis Gas Plant Revenue 4½% Bonds and that said bonds were sold for the purpose, among other things, of permitting the City of Indianapolis to discharge certain precedent obligations of the Citizens Gas Company as initial trustee and thereupon to acquire certain property owned by the Citizens Gas Company of Indianapolis as Trustee of said Public Charitable Trust. These defendants aver that the facts in this connection are as follows:

(a) That in pursuance of resolutions adopted in April, 1935, by the Board of Directors for Utilities of the Department of Utilities of the City of Indianapolis a public offering for the sale of said bonds was made on May 4, 1935; that notice of such public offering was caused to be published in the Indianapolis Star, Indianapolis Times and the Indianapolis News, three newspapers of general circulation in the City of Indianapolis and that such substantial publicity was given to such offering not only in the papers above mentioned but in financial publications generally throughout the United States; that no acceptable bid was received on May 4th, 1935, and thereafter by a resolution of said Board of Directors adopted May 7th, 1935, another public offering of said gas plant revenue bonds was directed to be made on May 28th, 1935; that notice of such public offering was published in said three newspapers on May 11th, 1935, and substantial publicity of said offer was contained in news items in the leading financial papers in the United States.

(b) That the joint bid of Halsey, Stuart & Co., and Otis & Co., for said bonds, which was submitted at the time fixed in said offering, was accepted by the Department of Utilities and the City of Indianapolis on May 29, 1935, and the proceeds of the bond issue were received on June 27, 1935.

(c) That a copy of the notice published by the City Controller of the City of Indianapolis pursuant to said resolution adopted May 7th, 1935, which is substantially identical with the notice first published, is attached hereto, marked Exhibit A and made a part of this answer. That in said notice the following statement was made about the use of the proceeds of said bonds:

"The proceeds of such bonds are to be used for the taking over of certain property owned by Citizens Gas Company of Indianapolis and/or in which it has an interest, including the redemption or extinguishment of its capital stock and/or for the payment of certain of its obligations and for the necessary expense incurred in connection therewith, including the expense of the city incident to obtaining such funds, as well as for the purpose of making certain betterments, improvements, extensions and additions to such property."

These answering defendants deny that the City of Indianapolis made any representation in said public offering that upon the acquisition of the property the City of Indianapolis would control the business, supplying the entire domestic and

counterclaim.

resolutions adopted in April, 1935, for Utilities of the Department of Indianapolis a public offering made on May 4, 1935; that was caused to be published in the Indianapolis Times and the Indianapolis Journal of general circulation in the city; such substantial publicity was given in the papers above mentioned generally throughout the city. The bid was received on May 10, 1935, and a resolution of said Board of Directors was directed to be made on May 11, 1935, and such public offering was published on May 11th, 1935, and such publicity was contained in news items in the United States.

W. H. Halsey, Stuart & Co., and Otis & Co. submitted at the time fixed by the Department of Utilities of Indianapolis on May 29, 1935, and such bids were received on June 1, 1935.

The public offering was published by the City Council pursuant to said resolution, which is substantially identical to the one attached hereto, marked "A", and is answer. That in said notice no mention was made about the use of the

property to be used for the taking of bonds by Citizens Gas Company of Indianapolis as an interest, including the use of its capital stock and/or for the redemption of its obligations and for the necessary expenses therewith, including the cost of obtaining such funds, as well as for the improvement of the property and for the betterment of the city.

That the City of Indianapolis in said public offering that the City of Indianapolis was offering the entire domestic and

Answer and Counterclaim

commercial gas requirements of the City of Indianapolis, its suburbs, or that the Citizens Gas Company had for 99 years covering the property of the City of Indianapolis Gas Company, thereby causing the entire gas business of the City of Indianapolis to be covered by the Citizens Gas Company; or that the property covered by the Citizens Gas Company had a depreciation of \$9,181,960 and a reproduction value of \$9,181,960 against which the capital value of said property was being first consolidated mortgage 5% gold bonds and the capital value of its outstanding bonds; or that upon the acquisition of the entire gas business by the Citizens Gas Company the City of Indianapolis cause the same to be continuously operated in an efficient manner and at a reasonable cost; or that the use all reasonable efforts to resist competition for the exclusive right to serve gas in the City of Indianapolis and in Marion County and in the towns of

These answering defendants allege that the bonds were sold to the purchasers thereof and that a copy of which marked Exhibit B is filed with this answer; that in said circular an appraisal made by an independent engineer on May 1, 1935, showed the cost of reproduction of the property of the Citizens Gas Company to be in the amount alleged in the bill of complaint, but the defendants aver that such appraisal was made by the purchaser of the bonds; that these defendants had nothing to do with the making of the appraisal; that they have never represented, publicly or otherwise, that the values of the property of the Citizens Gas Company were as therein stated, but that they always claimed and now claim that the value of the property of The Indianapolis Gas Company is many millions of dollars less than the value shown in said circular. That none of these answers has anything to do with the printing, publication or distribution of the circular identified as Exhibit B and that the circular was made by the City of Indianapolis or those in connection therewith were those who published notice identified as Exhibit A.

On information and belief these answers

commercial gas requirements of the City of Indianapolis and its suburbs, or that the Citizens Gas Company held a lease for 99 years covering the properties and business of The Indianapolis Gas Company, thereby giving it the control of the entire gas business of the City of Indianapolis and vicinity; or that the property covered by said lease from The Indianapolis Gas Company had a depreciated physical value of \$9,181,960 and a reproduction value of \$12,734,090 as against which the capital value of said Company's outstanding first consolidated mortgage 5% gold bonds was \$6,881,000 and the capital value of its outstanding stock was \$2,000,000; or that upon the acquisition of the entire property operated by the Citizens Gas Company the City of Indianapolis would cause the same to be continuously operated as a gas system in an efficient manner and at a reasonable cost and would use all reasonable efforts to resist competition and maintain the exclusive right to serve gas in the City of Indianapolis and in Marion County and in the towns therein.

These answering defendants allege that after said revenue bonds were sold the purchasers thereof issued a circular, a copy of which marked Exhibit B is filed herewith and made a part of this answer; that in said circular it is stated that an appraisal made by an independent engineer as of January 1, 1935, showed the cost of reproduction new and the depreciated physical value of the property of The Indianapolis Gas Company to be in the amount alleged in Subdivision 15 of plaintiff's bill of complaint, but these answering defendants aver that such appraisal was made by an employe of the purchaser of the bonds; that these answering defendants had nothing to do with the making of said appraisal and have never represented, publicly or otherwise, to any person that the values of the property of The Indianapolis Gas Company were as therein stated, but on the contrary have always claimed and now claim that the plant and property of The Indianapolis Gas Company, both its cost of reproduction new and its depreciated physical value, are many millions of dollars less than the figures stated in said circular. That none of these answering defendants had anything to do with the printing, publication of said circular identified as Exhibit B and that the only representations made by the City of Indianapolis or these answering defendants in connection therewith were those set out in the published notice identified as Exhibit A.

On information and belief these answering defendants al-

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lege that any representations so made were in connection with the sale of said revenue bonds and that neither the plaintiff nor any of the bondholders of The Indianapolis Gas Company had the right to or did in fact rely upon any such representations or change or alter his or their position on account thereof.

These answering defendants further aver that prior to September 9, 1935, and before the transfer of the property and assets for which the Citizens Gas Company of Indianapolis was Trustee to the City of Indianapolis as Successor Trustee and to wit, on the 10th day of July, 1935, The Indianapolis Gas Company was notified in writing by the Department of Utilities of the City of Indianapolis that the City of Indianapolis denied that the lease of September 30, 1913, was enforceable against it after the transfer of said property to said city; and said The Indianapolis Gas Company took no steps to prevent said transfer being made.

16. These answering defendants deny the averments of subdivision 16 of the bill of complaint that following the sale of said gas plant revenue bonds prior to September 9, 1935, the City of Indianapolis paid or provided for the payment directly to the holders of the Certificates of Beneficial Interest of the Citizens Gas Company of Indianapolis the sum of \$3,125,000 in full satisfaction of the sums due them and paid or provided for payment direct to the holders of the preferred stock of the Citizens Gas Company of Indianapolis the sum of \$1,050,000 in full payment of the sums due such preferred stockholders, and aver that the City of Indianapolis, by its Board of Directors for Utilities, caused the sums of \$2,500,000 and of \$1,050,000 to be paid to Citizens Gas Company of Indianapolis for the retirement of its common stock and redemption of its preferred stock, and thereupon said Company took appropriate steps to cause, and caused, the retirement of its common stock and redemption of its preferred stock. They admit that the Department of Utilities of the City of Indianapolis offered to pay to the holders of the outstanding bonds of the Citizens Gas Company the amounts due thereon together with interest to and including September 15, 1935, but allege that the amount of such bonds outstanding in the hands of the public at the time of such offer was only \$2,745,000; but deny that such steps were taken with knowledge of any obligations of the Citizens Gas Company of Indianapolis under said lease of September 30, 1913, after such transfer, because no such obligation in fact existed, or with knowledge

that after the retirement of its capital stock said Citizens Gas Company would be without means for meeting or paying its obligations, but on the contrary allege that at the time, each

and all of said steps were taken by the City of Indianapolis it was advised that said lease was not valid or enforceable against these answering defendants after the transfer of the property and assets of the Citizens Gas Company as original Trustee to the City of Indianapolis as Successor Trustee and further aver that the retirement of said stock and other obligations was made because of the fact that in the Todd case, referred to in subdivision 13 of plaintiff's bill of complaint, it had been held that a Public Charitable Trust existed in the property of the Citizens Gas Company subject to the precedent charge in favor of stockholders and creditors; that these answering defendants have been advised that while the mortgage securing the bonds of the Citizens Gas Company was not valid or within the power of the mortgagor to execute that the debt created thereby did constitute an equitable lien upon the property of said Company; that the payments so made to the holders of beneficial certificates, the holders of preferred stock and the owners of said bonds of the Citizens Gas Company of Indianapolis did not and could not in any way affect the ability of the Citizens Gas Company to perform its obligations, as the sums due were not due to the Citizens Gas Company, but on the contrary the sums due were due to persons who had a right to have such obligations discharged in connection with the transfer of the trust assets to the City of Indianapolis as Successor Trustee.

These answering defendants admit that they themselves gave no notice to the plaintiff herein or the holders of bonds of The Indianapolis Gas Company for whom the plaintiff is Trustee that said transfer was to be made, but allege on information and belief that the plaintiff had knowledge long prior to September 9, 1935, that said transfer was to be made and that many of the bondholders of The Indianapolis Gas Company had such notice and that neither the plaintiff nor such bondholders took any steps or commenced any action to prevent such transfer being made.

17. With respect to the averments in subdivision 17 of the bill of complaint. These answering defendants admit that on September 9, 1935, the Citizens Gas Company of Indianapolis executed two instruments of transfer and assignment, correct copies of which marked Exhibits E and F are made a

part of plaintiff's bill of complaint; but these answering defendants deny that in Exhibit E the transfer and assignment of the assets were made subject to the obligation of said lease of September 30, 1913. On the contrary, they aver that subdivisions 4 and 5 of said assignment contain the following provisions:

"4. This transfer and assignment also are made subject to all other legal obligations of said Company, including the legal obligations of said Company, if any, under each of the leases hereinafter mentioned.

5. The assignment of the lease agreement made and entered into the 30th day of September, 1913, between said Company and The Indianapolis Gas Company, whereby the latter company leased certain property for the manufacture and sale of gas and gas by-products to said Company for a term of ninety-nine years, and the assignment of the agreement of lease executed the 18th of July, 1933, between John J. 120 Reilly, Receiver of Majestic Building Company, and said Company, are expressly excluded from this instrument of transfer and assignment, separate instruments of assignment of such lease agreements being executed and delivered contemporaneously with this instrument.

This section in no way modifies or alters the provisions of the last preceding section that this transfer and assignment are made subject to all legal obligations of said Citizens Gas Company of Indianapolis, including the legal obligations of said Citizens Gas Company, if any, under each of said two leases."

That said above quoted language was included in said assignment because prior to the execution thereof these answering defendants had advised the Citizens Gas Company of Indianapolis that the City of Indianapolis would not accept any assignment of said lease of September 30, 1913, but would reject the same and the language of said assignment was therefore so written as to impose no obligation upon the City of Indianapolis unless such liability already existed as a matter of law, which these answering defendants deny.

That on the same day the Citizens Gas Company executed the instrument identified as Exhibit F, purporting to be an assignment of said lease of September 30, 1913, but that the City of Indianapolis and these answering defendants refused to accept the same and adopted a resolution, a correct copy of which, marked Exhibit G is made a part of plaintiff's bill of complaint.

18. With respect to subdivision 18 of the bill of complaint, these answering defendants admit that the City of Indianapolis accepted the assignment and transfer under the terms and conditions set forth in Exhibit E, but allege that they rejected the assignment of said lease of September 30, 1913, admit that they caused public notice of such rejection to be recorded in the office of the Recorder of Marion County, Indiana, and that a copy of said resolution marked Exhibit G is correctly set forth in plaintiff's bill of complaint.

These answering defendants further allege that on the same day, to-wit: September 9, 1935, they caused to be served on said The Indianapolis Gas Company a copy of the said resolution; also a copy of the rejection recorded in the office of the Recorder of Marion County, Indiana.

These answering defendants further allege that for a substantial time prior to September 9, 1935, they had asserted that said lease of September 30, 1913, was not valid and binding upon these answering defendants after the transfer of the assets and property of said public trust had been made to the City of Indianapolis as Successor Trustee and that continuously from no later than the 10th day of July, 1935, until the present date The Indianapolis Gas Company has been advised of this contention and has had full knowledge of the position of these answering defendants in respect of the validity of said lease.

These answering defendants further admit that the Board of Directors for Utilities of the Department of Utilities adopted a resolution referred to in subdivision 18 of the plaintiff's bill of complaint, a true and correct copy of which marked Exhibit C is filed herewith and made a part of 121 this answer; that said resolution was adopted September 9, 1935, and a copy thereof served on said The Indianapolis Gas Company on the same day. It is admitted that by the terms of said resolution the City of Indianapolis, in order to prevent an interruption of service to the consumers who were then receiving a supply of gas through the mains of The Indianapolis Gas Company did take possession of the plant of The Indianapolis Gas Company but for a temporary period and without prejudice to its rejection of said lease of September 30, 1913. These answering defendants allege that at the time such operation was commenced and continued there were approximately 50,000 persons whose available supply of gas could be obtained only through the mains of The Indianapolis Gas Company and that The Indianapolis Gas Com-

pany was fully aware of this situation. Said resolution contained the following statements:

"That the City by operating the property of The Indianapolis Gas Company for a period limited to six months, commencing September 9, 1935, did not assume or adopt said lease of September 30, 1913, nor recognize said lease as an obligation binding upon the city or its property; that the City was not to be considered as acting under said lease; that if The Indianapolis Gas Company refused to permit such temporary use of its property upon the terms stated in said resolution the City of Indianapolis would immediately discontinue such temporary use and relinquish the property of The Indianapolis Gas Company to that Company to be thenceforward operated by it; that The Indianapolis Gas Company was requested forthwith to state its position with respect to said temporary use."

These answering defendants further allege that said resolution contained an offer to pay for the temporary use of said property for a period of six months from September 9, 1935, by making payments similar to those contemplated and equal in amount to those provided for a like period of time by said lease between The Indianapolis Gas Company and the Citizens Gas Company; that on the 30th day of September, 1935, The Indianapolis Gas Company directed a letter to the Board of Directors for Utilities of the City of Indianapolis, a copy of which marked Exhibit D is attached hereto and made a part of this answer.

That in accordance with the agreement of The Indianapolis Gas Company contained in said letter of September 30, 1935, and relying upon the terms of said letter the City of Indianapolis paid, between September 30, 1935, and March 9, 1936, the sum of \$292,809.95 to or for the benefit of said The Indianapolis Gas Company, of which said sum \$171,575.00 was used in paying interest on bonds issued under the mortgage for which plaintiff is trustee. That thereafter and prior to March 9, 1936, by means of a letter dated March 2, 1936, addressed to The Indianapolis Gas Company and accepted by it on the same day, an agreement was entered into for the continued operations by the City of Indianapolis of the property of The Indianapolis Gas Company pending a compromise of the differences between said parties or a determination of that controversy by litigation; that a correct copy of said accepted proposition marked Exhibit E is attached hereto

and made a part of this answer; that by the terms of said agreement it was agreed between the Department of Utilities of the City of Indianapolis and said The Indianapolis Gas Company that the City of Indianapolis could operate the plant and property of said Company without prejudice to its position or rights and that The Indianapolis Gas Company, by accepting the payments provided for thereunder, had not waived its right to assert that the lease of September 30, 1913, was a valid and binding lease upon the City of Indianapolis and said Department of Utilities or against any property of either.

That pursuant to the terms of said agreement of March 2, 1936, the City of Indianapolis paid to The Indianapolis Gas Company \$171,575 on the 24th day of March, 1936, which sum was used in the payment of the semi-annual instalment of interest on the outstanding bonds of The Indianapolis Gas Company due March 30, 1936, being the bonds secured by the mortgage for which plaintiff is trustee; that also in pursuance of said agreement the city has deposited with The Indiana National Bank of Indianapolis as escrow agent prior to the filing of this answer the sum of \$231,575.00 and has paid as taxes on behalf of The Indianapolis Gas Company the sum of \$67,486.57.

On information and belief these answering defendants allege that the execution of said agreements and the payments made thereunder were with the knowledge and without the objection of the plaintiff and were with the knowledge and without the objection of a large number of the bondholders of The Indianapolis Gas Company.

These answering defendants allege that neither the plaintiff nor any bondholder at any time prior to the commencement of this action served any notice on these answering defendants or on The Indiana National Bank, Escrow Agent, under said agreement, objecting to or disapproving in whole or in part any of the acts or things done on their behalf by The Indianapolis Gas Company, all as alleged in this paragraph of answer; that the bondholders of The Indianapolis Gas Company have accepted benefits under the terms of said agreement, that is to say, the receipt of more than \$350,000 in cash which they have received and retained and which has never been tendered or repaid to the City of Indianapolis; that the plaintiff and the bondholders whom it represents cannot now be heard to say that these agreements are invalid as to them and in this connection the answering defendants aver

that prior to the commencement of this action the plaintiff and the bondholders for whom it is purporting to act had full knowledge or notice of the facts alleged in this paragraph of answer and made no attempt to restore to the City of Indianapolis any part of the consideration received by virtue of such agreement by the bondholders whom it represents.

These answering defendants admit that shortly after September 9, 1935, they suggested to The Indianapolis Gas Company the possibility of a revision by mutual agreement of said lease, but deny that any negotiations looking towards such an agreement were entered into; and aver the facts in that connection to be as follows:

(a) That it was soon realized by these answering defendants and The Indianapolis Gas Company that on account of income taxation of stockholders and bondholders of the 123 Indianapolis Gas Company, no such revision could as a practical matter be accomplished; that thereupon these answering defendants expressed to The Indianapolis Gas Company a willingness to negotiate for the purchase from The Indianapolis Gas Company all of its plant and property used or useful in manufacturing or furnishing gas or by-products to the City of Indianapolis if reasonable terms for the purchase of such property could be agreed upon and the property transferred to the City of Indianapolis with the consent of The Indianapolis Gas Company, its stockholders and bondholders, but not otherwise; that such proposal necessarily involved a termination of said lease if a satisfactory agreement could be entered into, but did not involve any revision of the existing lease or any cancellation of the lease except upon purchase by the City of the plant of The Indianapolis Gas Company.

(b) That it was at all times definitely stated to The Indianapolis Gas Company that no such proposal for the purchase of the plant or the property of such Company would be made unless these answering defendants were advised that a request for such proposal was desired, not only by the stockholders of The Indianapolis Gas Company, but by a substantial portion of the bondholders of such Company.

(c) That on the 10th day of February, 1936, the Board of Directors for Utilities of the Department of Utilities of the City of Indianapolis did make a proposal to The Indianapolis Gas Company for the acquisition of its property upon terms therein stated, which proposal was made at the request of The Indianapolis Gas Company, and before such proposal

was made these answering defendants were advised by The Indianapolis Gas Company and believed such advice to be true that a substantial number, though not all, of the bondholders and stockholders of The Indianapolis Gas Company desired such a proposal to be made.

These answering defendants aver on information and belief that all or a portion of the bondholders at whose instance and request the plaintiff claims it has commenced this action had knowledge of such negotiations as were pending and that the proposal made was invited by a substantial group of bondholders and stockholders of The Indianapolis Gas Company.

19. With respect to subdivision 19 of this complaint, these answering defendants admit that upon the execution and delivery of said lease of September 30, 1913, the same became subject to the deed of trust in which plaintiff is Successor Trustee and to such provisions thereof as are valid in law, but they deny that said lease was ever valid or enforceable for any period of time after the transfer of the property of said trust to the City of Indianapolis as Successor Trustee; they admit that the lease to the extent and for the term for which it was valid, if at all, but not otherwise, became a part of the trust estate covered by said mortgage to the same extent as though it had been executed and delivered prior to the execution and delivery of said deed of trust, except they aver that the plaintiff or its predecessor trustee and the bondholders who it represents had by the terms of said lease of September

24 30, 1913, due notice and warning of the probable invalidity of said lease for a term longer than the period of the franchise contract heretofore referred to which expired on August 30, 1930, and such additional period as was reasonably necessary within which to complete the transfer of the trust assets to the City of Indianapolis as Successor Trustee and allege that for the reasons hereinafter specifically set forth in subdivision 27 of this answer said lease, if valid, was not valid for a longer period.

These answering defendants admit that the covenant in said lease of September 30, 1913, requiring the payment of rent was made for the benefit of The Indianapolis Gas Company and for the indirect benefit, so far as the same was applicable to the payment of interest on the mortgage bonds of the bondholders, but deny that such covenant was valid for a period of 99 years or binding upon the City of Indianapolis as Successor Trustee; and deny that the mortgage trustee is vested with a distinct and independent right to enforce the

performance of the lessee's obligations and engagements under said lease in so far as the same directly affect any supposed rights of the holders of bonds, but on the contrary aver that The Indianapolis Gas Company, in the first instance, is the sole person with any legal right to enforce whatever obligations may exist under said lease of September 30, 1913, and that the plaintiff has no standing to seek to enforce the same until there has been a refusal on the part of The Indianapolis Gas Company so to do, which these answering defendants allege on information and belief has not occurred. They therefore allege that the plaintiff has no capacity to sue in this cause and that as hereinafter more particularly averred this suit is a collusive one and cannot be maintained by this plaintiff.

20. With respect to the averments of subdivision 20 of plaintiff's bill of complaint, these answering defendants admit that the lease of September 30, 1913, if valid at all, was valid and enforceable against Citizens Gas Company according to its provisions, during the term of the trusteeship of the Citizens Gas Company and until September 9, 1935, and aver that all payments of rental due thereunder have been duly made, but for the reasons hereinbefore specifically stated these answering defendants deny that the final decree and judgment in the case of *Fishback v. The Public Service Commission of Indiana* and in the case of *Williams v. The Citizens Gas Company of Indianapolis, et al.*, estop these answering defendants from asserting the invalidity of said lease on and after September 9, 1935. With respect to the decree in *Todd v. Citizens Gas Company*, referred to in subdivision 20 of the plaintiff's bill of complaint, and more particularly described in subdivision 13 thereof, these answering defendants aver that no issue was presented for the determination of the Court or adjudicated by the Court in that cause with respect to the validity of the lease of September 30, 1913, either before or after September 9, 1935, and aver that the judgment and decree of the United States District Court for the Southern District of Indiana in said cause is not binding or res adjudicata on these answering defendants as to any questions involved in this cause, for each of the following reasons:

First. The Indianapolis Gas Company was not named 125 as a party in the Todd suit and the bill of complaint contains no averments showing that it is entitled by representation to rely on any adjudication in that cause as an estoppel.

Second. The cause of action in the Todd case and in this case are essentially different and are not the same causes of action. The question involved in the Todd case and actually determined by the Court was whether a Public Charitable Trust was created in favor of the then gas consumers of the City of Indianapolis and the prospective users of such gas by means of the franchise ordinance of August 30, 1905, and the other relevant documents in connection therewith, whereas, the cause of action in this case is the question of the validity of the lease executed September 30, 1913, and the right of the Trustee of a Public Charitable Trust, to execute a lease as lessee which attempts to bind the trust estate by onerous terms and conditions for a period of 77 years after the expiration of the Trustee's term of office, which term was definitely fixed by the trust instrument. The causes of action not being the same there could be no estoppel by way of judgment except as to the issues actually tried and adjudicated by the Court in the Todd case. These answering defendants allege that the Court in the Todd case did not hear, determine, decide or adjudicate the questions involved in this case; that no issue as to such questions was even presented to the Court for its determination and that no evidence was heard or decision made with respect to the questions here involved.

Third. The estoppel of a judgment extends only to the facts in issue as they existed at the time the judgment was rendered and does not prevent a re-examination of the same questions even between the same parties, where in the interval the facts have changed or new facts have occurred which may alter the legal rights or relations of the parties. These answering defendants aver that the Todd case was heard, tried, determined and adjudicated prior to September 9, 1935, and that the facts and circumstances have been altered and changed since the date of said adjudication by reason of the transfer of the property of the trust on said last named date to the City of Indianapolis as Succeeding Trustee.

Fourth. That there was not in force at the date of the entry of the final decree in the Todd case any Federal Declaratory Judgment Act which authorized or empowered the Court to decide any question involving any difference between The Indianapolis Gas Company and the City of Indianapolis with respect to the rights of the parties under said lease of September 30, 1913, prior to a refusal upon the part of the City of Indianapolis to be bound by the terms of said lease.

These answering defendants further aver that there was

not at the date of the judgment and decree in the Todd case any existing controversy between The Indianapolis Gas Company and its stockholders or bondholders or this plaintiff and these answering defendants, or any of them, with respect to the validity of said lease.

21. With respect to the averments of subdivision 21 of plaintiff's bill of complaint, these answering defendants admit that the Citizens Gas Company operated under said 126 lease and operated the property included thereunder from the 28th day of November, 1913, to and including the 8th day of September, 1935, and received the income from such operations, but allege that during all of said time The Indianapolis Gas Company received the rentals contracted for and that the benefits to The Indianapolis Gas Company largely exceeded the benefits to the City of Indianapolis; they admit that the Citizens Gas Company of Indianapolis as Trustee requested the Trustee under the mortgage of The Indianapolis Gas Company to authenticate and deliver additional bonds to reimburse the Citizens Gas Company for capital expenditures on account of extensions and betterments to the plant and system of the Citizens Gas Company, but allege that the Citizens Gas Company received reimbursement therefor only to the extent of ninety per cent of the value of said improvements; and allege that the title to all of the improvements so made vested in The Indianapolis Gas Company; they deny that any of the answering defendants ever caused said bonds to be distributed and sold as bonds secured by a 99 year lease.

These answering defendants deny that they are estopped to assert that said lease of September 30, 1913, is not a valid and binding obligation on these answering defendants from and after September 9, 1935.

22. With respect to the averments of subdivision 22 of the plaintiff's bill of complaint, these answering defendants deny that by the sale of revenue bonds or by any representations made in connection with said bonds, or by acceptance of the assignment identified as Exhibit E and attached to plaintiff's bill of complaint, or by the retirement of the Certificates of Beneficial Interest and the preferred stock of Citizens Gas Company of Indianapolis or by the payment of the bonds of the Citizens Gas Company that these answering defendants have estopped themselves from asserting and maintaining that said lease of September 30, 1913, is unenforceable against these answering defendants after September 9, 1935;

and deny that in equity and good conscience they have no right to assert the invalidity of said lease at the present time; and deny that they are under any obligation to pay the plaintiff herein any sum of money whatever on account of said lease.

These answering defendants direct the Court's attention to the preceding averments of this answer wherein all the fact; in connection with the averments contained in the 22nd subdivision of the plaintiff's bill of complaint have been admitted to the extent that they are true, denied or explained.

23. These answering defendants admit the averments of the 23rd subdivision of plaintiff's bill of complaint that the City of Indianapolis and all of the answering defendants denied on September 9, 1935, and continuously have since denied that the lease of September 30, 1913, is a binding and enforceable obligation against these answering defendants, or any of them, after the transfer of the trust property from the Citizens Gas Company of Indianapolis, Trustee, to the City of Indianapolis as Successor Trustee, which transfer occurred on September 9, 1935. These answering defendants

admit that on September 30, 1935, in a letter of that date, 127 the City of Indianapolis did advise The Indianapolis Gas

Company that it was willing to undertake the negotiation of a new lease, but alleges that negotiations to that end were never entered into by The Indianapolis Gas Company and these answering defendants, or any of them; they further aver that on February 10, 1936, the Board of Directors for Utilities of the Department of Utilities of the City of Indianapolis, at the request of The Indianapolis Gas Company, made a proposal to it looking towards the purchase of the entire plant and property of The Indianapolis Gas Company and as a part of such purchase the extinguishment of such lease, but that the City of Indianapolis has never been willing to enter into any negotiations with The Indianapolis Gas Company without the consent and approval of its bondholders or properly constituted representatives thereof and so advised The Indianapolis Gas Company repeatedly prior to the commencement of this action. These answering defendants deny that any negotiations have been undertaken or conducted by the City of Indianapolis and The Indianapolis Gas Company which would have the effect of destroying or wasting or impinging upon any rights of said trust or which would damage the bondholders of The Indianapolis Gas Company.

With respect to subdivision 24 of the bill of complaint, these answering defendants admits that an agreement was executed between The Indianapolis Gas Company and the Board of Directors for Utilities of the City of Indianapolis on March 2nd, 1936, all as hereinbefore specifically alleged, a copy of which marked Exhibit E is attached to and made a part of this answer, but these answering defendants deny that said agreement deprived the plaintiff or the bondholders of The Indianapolis Gas Company of valuable property rights and allege that at and prior to the date of the execution of the agreement the City of Indianapolis had declined to pay the sum of \$171,575, which was the interest due on The Indianapolis Gas Company bonds on March 30, 1936, and was declining and had declined to make any further payments to or for the benefit of The Indianapolis Gas Company; that The Indianapolis Gas Company, by the execution of said agreement reserved to itself the full right to assert the validity of the lease of September 30, 1913, procured a payment of \$171,575, which was applied in payment of interest on the bonds under the mortgage for which the plaintiff is trustee and that said bondholders accepted said interest and have never repaid or offered to repay the same to the City of Indianapolis. In addition, as hereinbefore specifically alleged, the City of Indianapolis has paid to the date of the filing of this answer \$231,575.00 to The Indiana National Bank as escrow agent for The Indianapolis Gas Company, a large portion of said sum being for the benefit of the bondholders of said Company, and these answering defendants allege on information and belief that the plaintiff and the bondholders which it represents had full knowledge prior to the commencement of this action of the existence of said agreement, the contents thereof and the payments made to The Indiana National Bank as Trustee in pursuance thereof and that under the terms of said agreement the City of Indianapolis, through its Department of Utilities, was to
128 continue to operate the property owned by The Indianapolis Gas Company and never repudiated the same or served any notice on the City of Indianapolis or these answering defendants of their refusal to be bound thereby, but with their knowledge, approval and consent and by their action they have induced the City of Indianapolis to continue to make said payments and to operate the property of The Indianapolis Gas Company and are now estopped by their own conduct from contesting or challenging said agreement

of March 2nd, 1936, or from asserting that it was made in violation of their rights or from claiming that the execution of said contract or the steps taken thereunder violated the rights of the plaintiff or said bondholders if any they have.

These answering defendants expressly deny that the property of The Indianapolis Gas Company now has any good will or going concern value of any kind.

These answering defendants further deny, for reasons hereafter in subdivision 27 of this answer stated, that said lease repeatedly referred to as a 99 year lease has any validity or binding effect upon these answering defendants after September 9, 1935.

25. These answering defendants deny that at the time this bill of complaint was filed, or for a long time prior thereto, The Indianapolis Gas Company and the City of Indianapolis were engaged in the negotiation of any agreement, but allege that the proposition made by the City of Indianapolis to The Indianapolis Gas Company under date of February 10, 1936, had never been accepted by said Gas Company and no counter proposal had ever been made and that the City of Indianapolis had been advised prior to the commencement of this action by The Indianapolis Gas Company that the proposal so made was unacceptable to the bondholders and stockholders of The Indianapolis Gas Company. These answering defendants further deny that they have at any time attempted to negotiate or have been willing to negotiate and conclude any settlement of the controversy between The Indianapolis Gas Company and the City of Indianapolis without the full consent and approval of the bondholders of The Indianapolis Gas Company and appropriate action evidencing such consent on the part of the bondholders as well as the stockholders of said Indianapolis Gas Company and allege on information and belief that these facts were known to the plaintiff prior to the commencement of this action.

26. These answering defendants aver on information and belief that the plaintiff has no right to maintain this action and that this suit is a collusive one because of the following, all of which are alleged on information and belief:

(a) That the controversy in this cause exists solely and exclusively between The Indianapolis Gas Company and the City of Indianapolis.

(b) That The Indianapolis Gas Company has fairly and in good faith at all times represented the interests, both of

its stockholders and bondholders, in said controversy, and has continuously asserted and is now asserting that the lease of September 30, 1913, is a valid and binding obligation upon these answering defendants for the full term thereof and 129 has at no time taken any action which was inconsistent with that position or precluded it from asserting the validity of said lease in litigation or otherwise.

(c) That no demand was made on The Indianapolis Gas Company to commence an action in the courts of the State of Indiana to obtain a declaratory judgment of the validity of said lease or to bring any other proceeding, legal or equitable, to accomplish that purpose prior to the commencement of this action, or if in the alternative such a demand was made it was with the understanding in advance that the demand would be refused in order to enable the plaintiff to maintain this action. That The Indianapolis Gas Company has at all times been able and willing to commence and prosecute such actions as were necessary for the establishment of its rights.

(d) That the action taken by The Indianapolis Gas Company in entering into the agreements which it did enter into with the City of Indianapolis were in good faith and were calculated to and did inure to the benefit of the plaintiff and to the bondholders whom it represents and that, as hereinbefore averred, the bondholders accepted the benefits of said agreements and have continued to retain such benefits including the payment of interest to them in a sum of approximately \$350,000 and the plaintiff with full knowledge of the existence and character of said agreements prior to the commencement of this action has never attempted to repudiate or rescind the same and has never served notice on the City of Indianapolis that it is not bound thereby.

(e) That The Indianapolis Gas Company has cooperated with plaintiff in the preparation of the complaint filed in this cause.

27. These answering defendants allege that said lease of September 30, 1913, is not a valid or enforceable obligation against these answering defendants or the property of said Public Charitable Trust from and after September 9, 1935, for each of the following reasons:

First. The Citizens Gas Company of Indianapolis at the date of the execution of said lease was the Trustee of a Public Charitable Trust and had no express or implied power

as such Trustee to execute said lease and to agree to the terms and conditions therein contained, if at all, for any period of time beyond the terms for which it was Trustee and particularly for a period of 77 years thereafter; that the term of said lease in and of itself under the conditions stated rendered said lease invalid; and the effort to bind its successor Trustee, which is a municipal corporation, to perform the terms and conditions of said lease was ultra vires and void.

Second. That said lease contains, among others, the following provisions which are illegal and unenforceable:

(a) An agreement that the City of Indianapolis as Successor Trustee will re-finance the present outstanding bond issue of The Indianapolis Gas Company in the principal amount of approximately \$6,881,000 during the remaining 77 years of the term of said lease and if the bonds of that Company should sell below par that it will pay the difference to The Indianapolis Gas Company.

130 (b) An agreement for the increase in the annual rental of \$10,000 a year when gas is sold at more than 45c and less than 50c a 1,000 cubic feet and an additional increase of \$5,000 a year when gas is sold at 45c or less per 1,000 cubic feet.

(c) An agreement on the part of the Successor Trustee at all events without respect to whether payment therefor can be made from the revenues of The Indianapolis Gas property and without respect to whether by making such payments the City of Indianapolis would become indebted beyond its constitutional debt limitation to pay the rent reserved which, including payments for the benefit of the stockholders and bondholders of The Indianapolis Gas Company and taxes, has average almost \$600,000 per annum for five years immediately preceding September 9, 1935.

Third. That at the time said lease was executed, on the 30th day of September, 1913, and continuously ever since, the City of Indianapolis was and has been a city of the first class. That at the time said contract was made there was in force in Indiana the following statute:

"No executive department, officer or employee thereof shall have power to bind such city to any contract or agreement, or in any other way, to any extent beyond the amount of money at the time already appropriate by ordinance for the purposes of such department; and all contracts and

agreements, express or implied, and all obligations of any and every sort, beyond such existing appropriations are declared to be absolutely void: Provided, That the Board of Public Works shall have power to contract with any individual or corporation for lighting the streets, alleys and other public places or for supplying the city with gas, water, steam, power, heat or electricity, and for the collection, removal and disposal of garbage, ashes or refuse, on such terms and for such times, not exceeding the term fixed by Section 254 (48-7302) of this Act, as may be agreed upon; but any such contract shall be submitted to the Common Council of such city and approved by ordinance before the same shall take effect, and, if so approved, shall immediately become effective: Provided, further, That nothing herein contained shall prevent any such department from issuing any bond or other obligation expressly authorized by this act and provided for by ordinance." (Section 48-1507 Burns' Ind. Statutes Annotated 1933.)

Section 48-7302 referred to in the above quoted statute confers authority upon cities to enter into contracts to furnish the city

"with water, motive power, heat or light, * * *."

That the statute referred to contains the following proviso:

"That no such contract shall be entered into by any such city or town for furnishing such city or town and its inhabitants with water, motive power, drainage, sewerage, heat or light, upon or along the streets of such city or town for a term longer than twenty-five (25) years: and, provided further, that before any such contract shall be made by any

city of the first, second, third or fourth class such contract shall be first agreed to by the Board of Public

Works of said city, after which agreement, such Board shall cause a proper ordinance approving and confirming such contract to be presented for adoption by the Common Council of such city."

These answering defendants aver that at and prior to the execution of said lease of September 30, 1913, no appropriation had ever been made by ordinance by the City of Indianapolis to make the payments called for under the terms of said lease and that said lease, prior to its execution, was not agreed to by the Board of Public Works of said City nor was any ordinance ever adopted by the City of Indianapolis approving or confirming said lease, adopting the provisions thereof or attempting to bind the City of Indian-

apolis to the performance of such lease; that the Public Service Commission Act of Indiana did not repeal directly or by implication the provisions of the statutes above referred to and that the same were on September 30, 1913, and continuously ever since have been in full force and effect.

That at no time subsequent to September 30, 1913, has the City of Indianapolis made any appropriation for the purpose of paying any sum due under said lease of September 30, 1913, nor has its Board of Public Works of its Common Council attempted to ratify, approve or confirm said lease; that under the laws of Indiana said lease, when it was executed without such approval, was absolutely void and could not be ratified.

Fourth. That said lease of September 30, 1913, was and is onerous and burdensome upon the City of Indianapolis and the property of said Public Charitable Trust and for that reason was a lease which the initial trustee had no power to make beyond the definitely fixed term of its trusteeship; that among its burdensome provisions are the following:

(a) The payment of annual rent in a sum largely exceeding a fair return on the fair value of the property of The Indianapolis Gas Company.

(b) The requirement heretofore referred to that the Lessee should during the entire term of the lease re-finance the bond issue of The Indianapolis Gas Company and if it should sell said bonds below par to pay the difference to said The Indianapolis Gas Company.

(c) The requirements heretofore referred to penalizing the Lessee in the event it reduced the price of gas.

Fifth. That said lease being burdensome and onerous in its character, as hereinbefore averred, was not binding upon the City of Indianapolis as Successor Trustee and did not constitute an asset of said trust which it was bound to accept, but on the contrary it had the right under the law of Indiana to reject the same.

Sixth. That said lease was executed in violation of the terms of said Public Charitable Trust in that under the terms of said trust the Citizens Gas Company was required to dissolve upon the termination of its trusteeship whereas under the terms of said lease it is required to continue its corporate existence for the entire term of said lease, or to cause
132 its property to be conveyed to another corporation which shall maintain its existence for the full franchise period.

counterclaim.

Counter-Claim.

These answering defendants by way of counter-claim complain of the plaintiff, The Chase National Bank of the City of New York, as Trustee, The Indianapolis Gas Company, an Indiana corporation, and Citizens Gas Company of Indianapolis, an Indiana corporation, and by way of cross counter-claim allege:

That the plaintiff, The Chase National Bank of the City of New York, is a corporation organized and existing under and by virtue of the laws of New York and is a citizen and resident of the State of New York; that it is a successor trustee under a deed of trust executed on the 1st day of October, 1902, by the defendant, The Indianapolis Gas Company, to secure the payment of the principal and interest of certain bonds which are now outstanding in the hands of the public in the total principal amount of \$6,881,000.

That on the 30th day of September, 1913, the defendants, The Indianapolis Gas Company and Citizens Gas Company of Indianapolis, entered into a written lease for a term of 99 years, a copy of which written lease marked Exhibit B is made a part of the plaintiff's bill of complaint and by reference a part of this counter-claim.

That at the date of the execution of said lease said Citizens Gas Company of Indianapolis, the lessee therein, was not the absolute owner of the property consisting of a gas manufacturing and distributing plant which it was then operating, but was merely the initial trustee of a public charitable trust, created pursuant to the terms and conditions of a certain franchise, Article of Incorporation and By-laws of said Citizens Gas Company of Indianapolis, copies of which marked Exhibit C are made part of plaintiff's bill of complaint, and by reference a part of this counter-claim; that on said September 30, 1913, when said lease was executed to the Citizens Gas Company of Indianapolis, its terms of trusteeship of said public charitable trust was by the relevant documents hereinbefore referred to limited to the date when said franchise contract expired, to wit: August 30, 1930, and such time thereafter as was necessary for a transfer of said trust property to the successor trustee, the City of Indianapolis.

That said transfer was made on September 9, 1935, and that said Citizens Gas Company of Indianapolis is no longer the trustee of said public charitable trust.

There is a present existing controversy between this counter-claimant and defendant The Indianapolis Gas Company, as to whether said lease of September 30th, 1913, is a valid and enforceable obligation against these counter-claimants or the property of said public charitable trust from and after September 9, 1935; that The Indianapolis Gas Company has asserted for more than a year continuously last past and is now asserting that said lease is valid and binding upon these counter-claimants for the term thereof and that counter-claimants, and particularly the City of Indianapolis, are liable with respect to the lessee's covenants under said lease as fully as if the City of Indianapolis had expressly accepted an assignment of said lease.

That the defendant Citizens Gas Company of Indianapolis has an interest in the determination of said controversy because on September 9, 1935, it tendered to these counter-claimants an assignment of said lease, a copy of which marked Exhibit F is made a part of the plaintiff's complaint and by reference a part of this counter-claim, which assignment these counter-claimants refused to accept.

That the plaintiff, The Chase National Bank of the City of New York as Trustee under said Mortgage and Deed of Trust securing bonds of The Indianapolis Gas Company, although it has no legal right so to do, is asserting that said lease is valid and binding, and is for that reason made a party defendant to this counter-claim.

These answering defendants aver that said lease of September 30, 1913, is not a valid or enforceable obligation against these answering defendants or the property of said public charitable trust from and after September 9, 1935, for each of the following reasons:

First. The Citizens Gas Company of Indianapolis at the date of the execution of said lease was the Trustee of a Public Charitable Trust and had no express or implied power as such Trustee to execute said lease and to agree to the terms and conditions therein contained for any period of time beyond the term for which it was Trustee and particularly for a period of 77 years thereafter; that the term of said lease in and of itself under the conditions stated rendered said lease invalid; and the effort to bind its successor Trustee, which is a municipal corporation, to perform the terms and conditions of said lease was ultra vires and void.

Second. That said lease contains, among others, the following provisions which are illegal and unenforceable:

(a) An agreement that the City of Indianapolis as Successor Trustee will refinance the present outstanding bond issue of The Indianapolis Gas Company in the principal amount of \$6,881,000 during the remaining 77 years of the term of said lease and if the bonds of that Company should sell below par that it will pay the difference to The Indianapolis Gas Company.

(b) An agreement for the increase in the annual rental of \$10,000 a year when gas is sold at more than 45c and less than 50c a 1,000 cubic feet and an additional increase of \$5,000 a year when gas is sold at 45c or less per 1,000 cubic feet.

(c) An agreement on the part of the Successor Trustee at all events without respect to whether payment therefor can be made from the revenues of The Indianapolis Gas property and without respect to whether by making such payments the City of Indianapolis would become indebted beyond its constitutional debt limitation to pay the rent reserved which, including payments for the benefit of the stockholders and bondholders of The Indianapolis Gas Company and taxes, has averaged almost \$600,000 per annum for the five years immediately preceding September 9, 1935.

Third. That at the time said lease was executed, on 134 the 30th day of September, 1913, and continuously ever since, the City of Indianapolis was and has been a city of the first class. That at the time said contract was made there was in force in Indiana the following statute:

"No executive department, officer or employee thereof shall have power to bind such city to any contract or agreement, or in any other way, to any extent beyond the amount of money at the time already appropriated by ordinance for the purposes of such department; and all contracts and agreements, express or implied, and all obligations of any and every sort, beyond such existing appropriations are declared to be absolutely void: Provided, That the Board of Public Works shall have power to contract with any individual or corporation for lighting the streets, alleys and other public places or for supplying the city with gas, water, steam, power, heat or electricity, and for the collection, removal and disposal of garbage, ashes or refuse, on such terms and for such times, not exceeding the term fixed by Section 254 (48-7302) of this act, as may be agreed upon; but any such contract shall be submitted to the Common Council of such city and approved by ordinance before the same shall take effect, and,

if so approved, shall immediately become effective: Provided, further, that nothing herein contained shall prevent any such department from issuing any bond or other obligation expressly authorized by this act and provided for by ordinance." (Section 48-1507 Burns' Ind. Statutes Annotated 1933, Column 9.)

Section 48-7302 referred to in the above quoted statute confers authority upon cities to enter into contracts to furnish the city "with water, motive power, heat or light, * * * * *

That the statute referred to contains the following proviso:

"That no such contract shall be entered into by any such city or town for furnishing such city or town and its inhabitants with water, motive power, drainage, sewerage, heat or light, upon or along the streets of such city or town for a term longer than twenty-five (25) years; and, provided further, that before any such contract shall be made by any city of the first, second, third or fourth class such contract shall be first agreed to by the Board of Public Works of said city, after which agreement, such Board shall cause a proper ordinance approving and confirming such contract to be presented for adoption by the Common Council of such city."

These answering defendants aver that at and prior to the execution of said lease of September 30, 1913, no appropriation had ever been made by ordinance by the City of Indianapolis to make the payments called for under the terms of said lease and that said lease, prior to its execution was not agreed to by the Board of Public Works of said City nor was any ordinance ever adopted by the City of Indianapolis approving or confirming said lease, adopting the provisions thereof or attempting to bind the City of Indianapolis to the performance of such lease; that the Public Service Commission Act of Indiana did not repeal directly or by implication the provisions of the statutes above referred to and that the same were on September 30, 1913, and continuously ever since have been in full force and effect.

135 That at no time subsequent to September 30, 1913, has the City of Indianapolis made any appropriation for the purpose of paying any sum due under said lease of September 30, 1913, nor has its Board of Public Works or its Common Council attempted to ratify, approve or confirm said lease; that under the laws of Indiana said lease, when it was executed without such approval, was absolutely void and could not be ratified.

Fourth. That said lease of September 30, 1913, was and is onerous and burdensome upon the City of Indianapolis and the property of said Public Charitable Trust and for that reason was a lease which the initial trustee had no power to make beyond the definitely fixed term of its trusteeship; that among its burdensome provisions are the following:

(a) The payment of annual rent in a sum largely exceeding a fair return on the fair value of the property of The Indianapolis Gas Company.

(b) The requirement heretofore referred to that the Lessee should during the entire term of the lease re-finance the bond issue of The Indianapolis Gas Company and if it should sell said bonds below par to pay the difference to said The Indianapolis Gas Company.

(c) The requirement heretofore referred to penalizing the Lessee in the event it reduced the price of gas.

Fifth. That said lease being burdensome and onerous in its character, as hereinbefore averred, was not binding upon the City of Indianapolis as successor Trustee and did not constitute an asset of said trust which it was bound to accept, but on the contrary it had the right under the law of Indiana to reject the same.

Sixth. That said lease was executed in violation of the terms of said Public Charitable Trust in that under the terms of said trust the Citizens Gas Company was required to dissolve upon the termination of its trusteeship whereas under the terms of said lease it is required to continue its corporate existence for the entire term of said lease, or to cause its property to be conveyed to another corporation which shall maintain its existence for the full franchise period.

That these counter-claimants are entitled to a judgment and declaration of this Court that said lease of September 30, 1913, is not a valid and binding obligation against counter-claimants, but on the contrary is invalid, void and unenforceable against counter-claimants and against said trust property taken over by the City of Indianapolis as successor Trustee.

Wherefore, these answering defendants and counter-claimants pray:

1. That plaintiff's bill of complaint be dismissed for want of equity.

2. That this Court adjudge and declare:

(a) That these answering defendants and counter-claimants are not nor is any of them liable under the covenants of

said lease and that the property of said Public Charitable 136 Trust taken over by these answering defendants, or any of them, is not subject to the terms and provisions of said lease.

(b) That said lease of September 30, 1913, is invalid and void as against these answering defendants from and after September 9, 1935.

(c) That said lease of September 30, 1913, was void as against the City of Indianapolis from the date of its execution because made in violation of the Indiana statutes.

(d) That the use of the property of The Indianapolis Gas Company by these answering defendants since September 9, 1935, has been with the consent and approval of The Indianapolis Gas Company and binding upon its bondholders and this plaintiff and that no estoppel arises out of such operation against these answering defendants to deny the validity of said lease.

(e) That the agreement of March 2, 1936, between defendants, The City of Indianapolis and The Indianapolis Gas Company is valid and binding according to its terms upon plaintiff and defendant, The Indianapolis Gas Company, and that the continued use by defendant, the City of Indianapolis, of property of The Indianapolis Gas Company under and pursuant to the terms of such agreement is binding upon not only the defendant, The Indianapolis Gas Company, but also the plaintiff and the bondholders represented by it.

(f) That neither in the Todd, the Fishback nor the Williams cases was there any adjudication that said lease was binding upon these answering defendants at any time after the transfer of the trust property to the City of Indianapolis as successor Trustee.

3. For the costs of this action and all other proper relief agreeable to equity and good conscience.

James E. Deery,

Corporation Counsel.

Wm. H. Thompson,

Albert L. Rabb,

Thomas D. Stevenson,

Solicitors for said Answering Defendants.

October 1, 1936.

Notice of Indianapolis Gas Plant Revenue Bond Offering.

Notice is hereby given that the undersigned as City Controller of the City of Indianapolis, Indiana, by authority of the Board of Directors for Utilities of the City of Indianapolis, Indiana, will on Tuesday, May 28, 1935, between the hours of 10 a. m. and 12 noon, at his office in the City Hall in said City, receive written sealed bids in appropriate form for an offering of Indianapolis Gas Plant Revenue Bonds in the aggregate principal amount of Eight Million Dollars (\$8,000,000). Such bids will be opened at noon on said date, and such bonds will be sold to the highest bidder, being the maker of the bid which will give the City the lowest interest cost for the moneys so borrowed; the right to reject any and all bids being reserved. Bids for less than all of the bonds of said issue will not be accepted. Bids will be accepted or rejected with reasonable promptness. Bids may be conditioned upon the approval of counsel to be selected and employed by the bidder as to the legality of the issue. Each bidder shall make a deposit of One Hundred Thousand Dollars (\$100,000) in the form of a check certified by a responsible bank or trust company located in the City of Indianapolis, Indiana, or in the States of New York, Illinois, or Ohio, payable to the order of the City Controller of the City of Indianapolis, Indiana, such checks to be returned to those bidders whose checks are not accepted. In event a successful bidder fails to perform the terms of his bid, the City shall retain the proceeds of his check as liquidated damages; and by making deposit of such check with the City Controller the bidder shall be deemed to have agreed that the amount of such liquidated damages is reasonable.

The proceeds of such bonds are to be used for the taking over of certain property owned by Citizens Gas Company of Indianapolis and/or in which it has an interest, including the redemption or extinguishment of its capital stock and/or for the payment of certain of its obligations and for the necessary expense incurred in connection therewith, including the expense of the City incident to obtaining such funds, as well as for the purpose of making certain betterments, improvements, extensions and additions to such property.

Said bonds are to be payable solely from the income and revenues of such utility property and are not to be an in-

debtedness of the City payable out of taxes. Said bonds are to be issued in denominations of One Thousand Dollars each, and numbered consecutively, commencing with 1. They are to be registerable as to principal, but not as to interest. They are to be exempt from taxation as to principal and income as prescribed by the Indiana statutes. Payment of their principal and interest are secured by a charge upon all the revenues from the operation of all of the gas system owned and/or operated by the City of Indianapolis.

Said bonds are to be issued under the authority of the Indiana statutes, including Chapter 77 of the Acts of 1929, Chapter 67 of the Acts of 1931, and Chapter 125 of the Acts of 1933 as amended by Chapter 311 of the Acts of 1935 138 of the General Assembly of the State of Indiana (the latter having been House Bill 469).

Said bonds are to become due at such time or times, and in such manner with such accompanying pertinent provisions, as shall be specified by the terms of the accepted bid; but there shall be no bonds maturing in less than two (2) nor more than forty (40) years from the date of issuance.

The interest rate upon said bonds is to be that fixed by the terms of the accepted bid therefor, but shall not exceed five and one-half per cent per annum, and shall be evidenced by coupons attached to said bonds and payable semi-annually.

Said bonds are not to be sold at a discount in excess of five (5) per cent.

Both bonds and interest coupons are to be payable at the office of the Treasurer of Marion County, Indiana, as ex-officio Treasurer of the City of Indianapolis, and/or at such bank or trust company or office, whether in Indianapolis, or in Chicago, Illinois, or New York City, New York, or elsewhere, as may be agreed upon between said Board and the successful bidder for said bonds, or in the absence of such an agreement specified by said Board.

Said bonds are to be dated as of such date as may be agreed upon between said Board and the successful bidder, not inconsistent with law.

Bids shall specify also either:

(1) Serial maturities for said bonds, but no bonds to mature in less than two (2) years from the date of their issuance, and the ultimate maturity date to be between twenty-nine (29) and forty (40) years from their date of issuance; the City to agree to pay not less than Four Hundred and Fifty Thousand Dollars (\$450,000) and not more than Five Hundred Thou-

sand Dollars (\$500,000), the amount to be specified in the bid, each year after the first two years from the date of said bonds, out of the revenues from the operation of such gas system, for combined principal and interest on said bonds, to be available therefor in such proportions as the bidder may specify in his bid; or

(2) The maturity of said bonds at the expiration of not to exceed forty (40) years from their date of issuance, with sinking fund provisions, to wit: The City agrees to pay out of the revenues from the operation of said gas system, not less than \$50,000 and not more than \$200,000 each year after the first two years from the date of said bonds into a sinking fund to be specially applied to the redemption and payment on or before the maturity of the bonds. The moneys so paid shall be deposited in a special account hereinafter more specifically referred to. The moneys in said account for sinking fund purposes shall be used to redeem bonds as follows: This Board may cause to be purchased in the open market at the then market price thereof—but not in any event to exceed par plus two per cent of the principal plus accrued interest—as many of the bonds as can be so acquired by the moneys in said account for sinking fund purposes from time to time in the discretion of this Board; and for this purpose the Board may use any additional funds that may be deposited in said account for sinking fund purposes. Or, in the discretion of

139 this Board, it may cause notice to be published in one or more daily papers of general circulation printed and published in the City of Indianapolis that it will cause at a time and place named therein, bonds to be purchased, and inviting offers for the purchase of said bonds at prices to be named in said offers by the holders thereof, in which event the Board may accept the lowest of such offers, not exceeding in any event a price equal to par plus two per cent thereof plus accrued interest, and the bonds mentioned in the offers so accepted may thereupon be purchased by this Board to the extent of moneys in said sinking fund. If in either case this Board shall be unable to purchase at a price not exceeding par plus two per cent plus accrued interest, bonds sufficient in number to permit the investment of the money available for sinking fund purposes within sixty days after the payment of any instalment of sinking fund moneys into said account or accounts, then the Board shall cause a drawing by lot to be held, to result in the selection of numbers of said bonds in a quantity sufficient at the price of par plus two per

cent thereof plus accrued interest to absorb substantially all the available moneys in said sinking fund account, and the Board shall thereupon advertise the number upon said bonds so drawn in one daily newspaper of general circulation printed and published in the City of Indianapolis, Indiana, and in one daily newspaper of general circulation printed and published in the City of New York, New York, once a week for two successive weeks, and by such advertisement shall require said bonds so numbered to be presented for redemption at the place or places where interest upon said bonds may then be payable, on a day specified in said advertisement, such day being not less than thirty (30) days from the date of the first publication of said advertisement; and such advertisement shall also state that interest shall cease to accrue upon said day named therein for the redemption of said bonds. If any of the bonds so drawn shall be registered, a similar notice shall be sent by this Board to the registered holder thereof at his address registered with the City Controller. Interest upon the bonds so drawn shall cease accordingly on the day named in said notice and on or after said day said bonds, upon presentation and surrender thereof with all unmatured coupons, shall be paid at the price of par plus two per cent thereof plus accrued interest to said date. If any of the bonds so drawn shall not be presented and surrendered to the paying agency on the day so fixed therefor, the moneys remaining in the sinking fund account applicable to the redemption of such bonds shall thereafter be set aside and remain segregated in a special trust for the redemption of such bonds when the same shall be presented and surrendered. All bonds purchased in either such manner or so redeemed shall forthwith be cancelled and become void for every purpose; or

(3) Either of said alternatives, together with a provision permitting any bonds outstanding and unpaid from and after ten years from the date of their issuance to be called and paid by the City at any interest paying date at such price as may be agreed upon between the Board and the successful bidder.

The City agrees to fix, maintain and collect reasonable and just charges for gas service and faithfully to comply with all pertinent provisions of law, including the requirement of Chapter 190 of the Acts of 1933 of the General Assembly of Indiana, viz. that a reasonable and just charge shall be such as produces sufficient revenue to pay, among other things, interest upon bonds, provide a sinking fund for

liquidation of bonds, maintenance costs, operating charges, adequate funds for working capital, repairs and upkeep.

A copy of the Resolution of the Board of Directors for Utilities of the City of Indianapolis, Indiana, dated May 7, 1935, authorizing such bond issue, may be examined by any interested person upon application to the undersigned.

Walter C. Boetche,
City Controller,
 City Hall, Indianapolis, Ind.

EXHIBIT B.

Exempt from All Present Federal Income Taxation.

Tax Exempt in the State of Indiana.

\$8,000,000.

City of Indianapolis, Indiana
 Gas Plant Revenue
 4½% Bonds.

Dated June 1, 1935.

Due serially June 1, 1938 to 1967, both inclusive.

Principal and semi-annual interest (June 1 and December 1) payable at the option of the holder at the office of Halsey, Stuart & Co. in Chicago, Illinois, or in New York City or at The Union Trust Company in Indianapolis, Indiana, or at the principal office of The Cleveland Trust Company in Cleveland, Ohio. Coupon bonds in the denomination of \$1,000, registerable as to principal.

Under a resolution adopted May 7, 1935, by the Board of Directors for Utilities of the City of Indianapolis, the City authorized the issuance of these Gas Plant Revenue bonds for the purpose of obtaining funds to exercise its franchise rights to acquire the properties and business of Citizens Gas Company of Indianapolis and for improvements and extensions to such properties.

These bonds constitute, in the opinion of counsel, valid and binding obligations of the City of Indianapolis, Indiana, in accordance with the terms and provisions thereof, secured by a charge upon all of the income and revenues of all the gas utility system now or hereafter owned and/or

operated by said City and payable solely and exclusively out of such income and revenues.

Under said resolution adopted May 7, 1935, the City covenants to fix, maintain and collect reasonable and just charges for gas service and faithfully to comply with all pertinent provisions of law including the requirement of Chapter 190 of the Acts of 1933 General Assembly of the State of Indiana, viz., that a reasonable and just charge shall be such as produces sufficient revenue to pay, among other things, principal of and interest on these bonds, maintenance cost, operating charges, adequate funds for working capital, repairs and upkeep.

The City further covenants that it will cause to be deposited in any one or more responsible banks or trust companies in the City of Indianapolis in a special account under such condition as that the monies cannot be withdrawn from such account or accounts except for the payment of interest on and principal of these bonds, on the fifteenth day of each month during the operation by the City of said gas system out of the revenues derived from the operation, a sum equal to one-twelfth of the annual amount due and payable for principal and interest on these bonds, and the City agrees that there will be credited in this manner to such bond and interest fund not less than \$360,000 annually in the years 1936 and 1937; \$450,000 annually in the years 1938 to 1940, both inclusive; \$500,000 annually in the years 1941 to 1967, both inclusive.

Amounts and Maturities.

\$ 90,000 June 1, 1938	\$258,000 June 1, 1953
94,000 June 1, 1939	270,000 June 1, 1954
99,000 June 1, 1940	282,000 June 1, 1955
152,000 June 1, 1941	295,000 June 1, 1956
159,000 June 1, 1942	308,000 June 1, 1957
166,000 June 1, 1943	322,000 June 1, 1958
174,000 June 1, 1944	336,000 June 1, 1959
182,000 June 1, 1945	351,000 June 1, 1960
190,000 June 1, 1946	367,000 June 1, 1961
198,000 June 1, 1947	384,000 June 1, 1962
207,000 June 1, 1948	401,000 June 1, 1963
216,000 June 1, 1949	419,000 June 1, 1964
226,000 June 1, 1950	438,000 June 1, 1965
236,000 June 1, 1951	458,000 June 1, 1966
247,000 June 1, 1952	475,000 June 1, 1967

Legality of these bonds has been approved by Thompson, Rabb and Stevenson for the City and by Matson, Ross, McCord and Clifford for the bankers. Their opinion will be furnished upon delivery of the bonds.

Halsey, Stuart & Co.
Incorporated
Chicago, 201 South La Salle Street
New York, 35 Wall Street
And Other Principal Cities

The information contained herein has been carefully compiled from sources considered reliable and while not guaranteed as to completeness or accuracy, we believe it to be correct as of this date.

Circular No. 2506.

July 1, 1935.

Purpose of Issue.

Pursuant to a resolution adopted by the Board of Directors for Utilities of the City of Indianapolis, Indiana, on May 7, 1935, entitled "A resolution (No. 2-1935) for the issuance of Gas Plant Revenue Bonds," and in compliance with all applicable provisions of law including Chapter 77 of the Acts of 1929, Chapter 67 of the Acts of 1931 and Chapter 125 of the Acts of 1933, as amended by Chapter 311 of the Acts of 1935 of the General Assembly of the State of Indiana, 142 these bonds are issued to provide funds that the City may exercise its franchise rights to acquire property owned by Citizens Gas Company of Indianapolis and/or in which it has an interest including monies required to be paid for the redemption or extinguishment of its capital stock and/or for the payment of certain of its obligations (including funded debt) and for the necessary expenses incurred in connection therewith, including the expenses of the City incident to obtaining such funds as well as for the purpose of making certain betterments, improvements, extensions and additions to such property.

Territory Served.

Upon consummation of this acquisition the City advises it will control a business supplying the entire domestic and commercial gas requirements of the City of Indianapolis and its

suburbs. Indianapolis, the capital of the State of Indiana and the county seat of Marion County, is located in the central part of the State. It is an important manufacturing, commercial and financial center. According to the 1930 census the City had a population of 364,161 with an estimated population including the suburban area of more than 427,000. Seven railroads and numerous bus lines entering the city supply ample transportation.

History and Business of Citizens Gas Company of Indianapolis.

We are advised Citizens Gas Company of Indianapolis was incorporated under the laws of Indiana in May, 1906, and until 1913 supplied gas in part of the City. In that year the company leased for a period of 99 years the properties and business of the Indianapolis Gas Company, thereby gaining control of the entire gas business of the City of Indianapolis and its environs. By the terms of this lease, the lessee pays a rental consisting of (a) the interest on the Indianapolis Gas Company First Consolidated Mortgage 5% Gold Bonds due October 1, 1952, of which there were \$6,881,000 principal amount outstanding at December 31, 1934, and the interest on such additional bonds as may be issued from time to time for refunding or extensions to the leased property; (b) an amount equivalent to 6% per annum on the \$2,000,000 of capital stock of Indianapolis Gas Company (with a possible increase of \$15,000 if the price of gas to the consumer does not exceed 45 cents per thousand cubic feet); (c) \$300 annually for organization expense and (d) such amounts equal to the taxes levied against the property including Federal Income Tax. As of January 1, 1935, the company served through owned and leased property approximately 73,800 domestic, 866 commercial and 523 industrial consumers.

An appraisal made by an independent engineer found that as of January 1, 1935, the owned property of Citizens Gas Company consisted of a coke oven plant, known as Prospect Street Station, comprising three batteries of forty 14-ton Wilpute ovens with a total capacity of 11,000,000 cubic feet and two 8' 6" water gas sets having a total daily capacity of 1,800,000 cubic feet and 9,000,000 cubic feet of holder capacity. The distribution system consists of approximately 336 miles

of cast iron and steel mains. The leased property, owned by Indianapolis Gas Company according to the same appraisal, consists of a coke oven plant of one battery of forty-one 15-ton Semet-Solvay coke ovens with a daily capacity of 3,500,000 cubic feet, also two 11' 0" and two 7' 6" water gas sets, with a total daily capacity of 6,000,000 cubic feet and holder capacity of 3,000,000 cubic feet. The distribution system consists of approximately 531 miles of cast iron and steel mains. Based on this appraisal which took into consideration an allowance of \$700,000 for working capital for Citizens Gas Company, as well as present day average costs, the age of the equipment and the amount and kind of deferred maintenance, the following costs of reproduction new and depreciated physical values as of January 1, 1935, were estimated:

	Cost of Reproduction—New	Depreciated Physical Value
Citizens Gas Company	\$17,607,310	\$13,431,230
Indianapolis Gas Company	12,730,490	9,181,960
	\$30,337,800	\$22,613,190

At the present time we are advised the coke oven and water gas plants of the leased property are not used in operations but it is anticipated that the coke oven plant will be in operation by October 1, 1935. The by-products from the coke operations include coke, ammonia and coal tar, which in the past have been sold in the open market through various sales agencies. The coal requirements of Citizens Gas Company have been purchased principally from the Milburn By-Products Coal Company, Milburn, West Virginia, the entire capital stock of which is owned by Citizens Gas Company. Other coal purchases are made from other coal producers of the quality and quantity necessary for blending purposes. We are advised the capacity of the Milburn coal mine is greatly in excess of the Company's plant requirements. Income Statement Calendar Years 1931-35*

The following comparative earning statement, based on municipal ownership and operation, of Citizens Gas Company was compiled from the independent engineer's report submitted us June 22, 1935:

	1931	1932	1933	1934	1935*
Total Income.....	\$5,049,486	\$4,326,724	\$4,148,698	\$4,773,273	\$5,103,650
Operating Expenses, Taxes, and Rentals	4,224,566	3,731,900	3,628,957	4,104,460	4,351,400
Balance.....	\$ 824,920	\$ 594,824	\$ 519,741	\$ 668,813	\$ 752,250
Add: Estimated savings in taxes through municipal ownership and operation (see note)	\$ 166,664	\$ 142,516	\$ 122,733	\$ 113,811	\$ 121,000
Balance available for bond service and depre- ciation.....	\$ 988,584	\$ 737,340	\$ 642,474	\$ 782,624	\$ 873,250

The annual service charge on this issue is \$360,000 1936-1937; \$450,000 1938-1940; \$500,000 1941-1967.

(Note)—The City states that through municipal ownership and operation of Citizens Gas Company there will be a savings of Federal Income and City taxes which in the years covered above would have approximated the amounts shown.

The Feasibility of Natural Gas.

The City has been considering the possibility of introducing natural gas into Indianapolis provided it can be purchased at a sufficiently attractive price. An independent survey by recognized engineers finds it would be entirely feasible for the City to serve mixed natural and manufactured gas to domestic and commercial consumers and straight natural gas to industrial consumers. The change from manufactured gas to natural or mixed gas operation would, in engineer's 144 opinion, necessitate a further investment of approximately \$2,500,000 to extend the distribution facilities, but the belief is that such operation will materially improve the earning power of these properties. The sale of the present issue of \$8,000,000 bonds, together with cash now on hand provides approximately \$1,500,000 cash over and above the cost of acquisition of the property. It is the engineer's estimate that for the first normal year after the introduction of natural gas, gross revenues should slightly exceed \$5,000,000, net income before depreciation and bond service should approximate \$990,000, while in the fifth year gross should approximate \$10,600,000 and net income before depreciation and bond service should exceed \$3,000,000.

* 1935—5 months actual, 7 months estimated.

Security.

These Gas Plant Revenue bonds constitute, in the opinion of counsel, valid and legally binding obligations of the City of Indianapolis, secured by a charge upon all of the revenues derived from the entire gas system owned and/or operated by the City of Indianapolis and principal and interest on the bonds are payable solely from such revenues.

Covenants of the City.

With respect to these bonds the City covenants:

That it will cause to be deposited in any one or more responsible banks or trust companies in the City of Indianapolis, in a special account under such conditions as that the monies cannot be withdrawn from such account or accounts, except for the payment of interest on and the principal of these bonds, on the fifteenth day of each month during the operation of said gas system by the City out of the revenues derived from the operation of said gas system a sum equal to one-twelfth of the annual amount due and payable for principal and interest on the next succeeding date of said bonds and the City agrees that there will be credited to this bond and interest fund, \$360,000 annually 1936-1937; \$450,000 annually 1938-1940 and \$500,000 annually 1941-1967;

That it will fix, maintain and collect reasonable and just charges for gas service and faithfully to comply with all pertinent provisions of law including the requirement of Chapter 190 of the Acts of the 1933 General Assembly of the State of Indiana, viz., that a reasonable and just charge shall be such as produces sufficient revenue to pay, among other things, principal of and interest on these bonds, maintenance cost, operating charges, adequate funds for working capital, repairs and upkeep;

That upon acquisition of the property operated by the Citizens Gas Company, it will cause the same to be continually operated as a gas system in an efficient manner and at reasonable cost and maintained in good operating condition; and it will use all reasonable efforts to resist competition and maintain the exclusive right to serve gas in the City of Indianapolis and in Marion County, Indiana, and the towns therein;

That so long as any of these bonds are outstanding and unpaid the City shall maintain insurance on the insurable parts of said gas system of a kind and in an amount as would

normally be carried by privately owned companies engaged in a similar business; which insurance shall be placed and maintained in responsible and qualified companies and the proceeds of such insurance shall be used in replacing, repairing or rehabilitating property destroyed or damaged, or in extensions, additions or improvements and if not so used shall be used in the purchase and retirement of outstanding bonds;

That so long as any of these bonds are outstanding and unpaid, not to sell, mortgage or dispose of said gas system or any substantial and useful part thereof unless the proceeds of such sale or disposition are used for the payment of the principal and interest of the then outstanding and unpaid bonds. The right to lease such utility property and gas system on terms and in a manner consistent with law, may be exercised provided the terms do not adversely affect the rights and interest of the holders of these bonds. The city prior to the execution of any such lease of any part of the gas system under the terms hereof, agrees to give notice if or when it intends to execute any such lease through publication in one newspaper, printed in the English language, of general circulation, in the City of Indianapolis, Indiana, in the City of Chicago, Illinois, and in the City of New York, New York, at least four weeks prior to the execution of such lease.

That so long as any of these bonds are outstanding and unpaid, it shall not issue additional bonds or other obligations payable out of the revenues of said gas system except for refunding said outstanding bonds or for the acquisition of revenue producing property, betterments, extensions and/or additions.

We Recommend These Bonds for Investment.

Price on Application.

Halsey, Stuart & Co.

Incorporated.

Chicago, 201 South La Salle Street

New York, 35 Wall Street

And Other Principal Cities

The information contained herein has been carefully compiled from sources considered reliable and while not guaranteed as to completeness or accuracy, we believe it to be correct as of this date.

Circular No. 2506.

July 1, 1935.

Resolution for Temporary Use of Property of The Indianapolis Gas Company Adopted September 9, 1935.

Whereas, The Indianapolis Gas Company, an Indiana corporation, is the owner of certain property used and useful in the distribution of gas in the City of Indianapolis and Marion County, Indiana, and which as such has been used by Citizen's Gas Company of Indianapolis under the terms of a certain lease bearing date of September 30, 1913; and

Whereas, the City of Indianapolis by this Board of Directors for Utilities has in the exercise of the discretion conferred upon it by law refused to adopt, assume, or take over said lease or to accept an assignment thereof or to operate said property thereunder; and

Whereas, various consumers of gas in Indianapolis and Marion County, Indiana, will suffer interruption of service commencing at the time of the acquisition by the City of Indianapolis of other property of said Citizens Gas Company of Indianapolis, unless property of said The Indianapolis Gas Company is temporarily used therefor; and

Whereas, solely to prevent such an interruption of service, and for no other purpose, the City of Indianapolis is willing to use the property of said The Indianapolis Gas Company to the extent necessary for such purpose, for a period of six months from the time of the acquisition by the City of other property of said Citizens Gas Company, the City during such period to make to and on behalf of said The Indianapolis Gas Company payments similar to those contemplated, for a like period of time, by said lease between said The Indianapolis Gas Company and said Citizens Gas Company; but the City not to be acting under said lease, or to be considered as acting under said lease, or as having adopted it in any respect, or as having recognized said lease as an obligation in any manner; and during such period the City is willing to negotiate terms for the continued user of such property of said The Indianapolis Gas Company; and

Whereas, the City by this Board has made known such desire to available officials of said The Indianapolis Gas Company, but the officials of said Company have as yet taken no action in the name or on behalf of said Company with respect to such user temporarily by the City; and

Whereas, immediate action by the City of Indianapolis^{pt} this Board is necessary to prevent interruption of service to gas consumers in the City of Indianapolis and Marion County, Indiana;

Now Therefore Be It Resolved by the Board of Directors for Utilities of the City of Indianapolis, Indiana, acting in the exercise of the discretion conferred upon them by law and in the name of said City:

1. That to the extent necessary to prevent interruption of service to the consumers and in the territory heretofore served by Citizens Gas Company of Indianapolis, and solely for the purpose of preventing any such interruption, the City of Indianapolis in the operation of the property acquired by it used and useful in the manufacture and distribution of gas

shall use property of The Indianapolis Gas Company, an 147 Indiana corporation, for a period of six months commencing September 9, 1935; for which user the City of Indianapolis by this Board of Directors for Utilities shall pay, out of funds available to the order of said Board, payments to or on behalf of said The Indianapolis Gas Company equivalent to those contemplated for a like period of time by the certain lease dated September 30, 1913, between said The Indianapolis Gas Company and said Citizens Gas Company of Indianapolis; but by so doing the City does not assume or adopt such lease or any assignment thereof nor does the City recognize such lease as an obligation binding upon the City or upon any property acquired by the City from said Citizens Gas Company of Indianapolis, and the City is not to be considered as acting under such lease or upon any agreements or covenants contained therein or pertaining thereto.

2. If said The Indianapolis Gas Company refuses to permit such temporary use of its property by the City, the City shall at once discontinue such temporary use and relinquish to said The Indianapolis Gas Company such possession as the City may have temporarily exercised over said property, to be thenceforward operated by said The Indianapolis Gas Company.

3. That said The Indianapolis Gas Company be forthwith requested on behalf of the City to take a position with respect to such temporary use of its property by the City, whether to consent or refuse consent thereto; and also to negotiate with the City for fair terms appropriate to use by the City of such property.

4. That a certified copy of this resolution be forthwith served upon said The Indianapolis Gas Company as evidence of the intent, desire, and attitude of the City upon these matters.

Resolution for Rejection of Assignment of Lease Between the Indianapolis Gas Co. and Citizens Gas Company of Indianapolis, Adopted September 9, 1935.

Whereas, pursuant to rights and duties heretofore established, Citizens Gas Company of Indianapolis, an Indiana corporation, has this day executed and tendered to the City of Indianapolis and its Board of Directors for Utilities, instruments of transfer of all of its property, including a deed of conveyance of real estate, assignments of lease interests, and assignments of personal property, subject to the legal obligations of said Company including the obligation of a certain lease bearing date of September 30, 1913, by and between The Indianapolis Gas Company an Indiana corporation, and Citizens Gas Company of Indianapolis recorded in Miscellaneous Record 78 at page 257 and following in the office of the Recorder of Marion County, Indiana; and

Whereas, said Citizens Gas Company of Indianapolis has also this day executed and tendered to the City of Indianapolis and its Board of Directors for Utilities an instrument purporting specifically to assign said The Indianapolis Gas Company lease to said City, subject to the terms and conditions contained in said lease; and

Whereas, this Board deems said lease to be onerous 148 and disadvantageous to the City of Indianapolis, and in the discretion of this Board said lease should not be taken over, adopted, or assumed, but should be wholly rejected, its assignment not accepted, and said lease should not be recognized as one of the obligations, if such it is, of said Citizens Gas Company of Indianapolis to which any property of said Company is subjected when in the possession of the City of Indianapolis; and

Whereas, this Board in its discretion determines that the other property of said Citizens Gas Company of Indianapolis tendered by it to the City of Indianapolis should be accepted upon condition that such property is not subject to any obligation to said The Indianapolis Gas Company;

Now therefore be it resolved by the Board of Directors for Utilities of the City of Indianapolis, Indiana, in the exercise of the discretion conferred upon it by law, and on behalf of the City of Indianapolis:

1. That the City of Indianapolis by this Board accept the tendered assignments, transfers, and conveyances of all of the property of Citizens Gas Company of Indianapolis, an Indiana corporation, excepting, however the certain lease executed by The Indianapolis Gas Company, an Indiana corporation, to said Citizens Gas Company, bearing date of September 30, 1913; and on assumption and condition that such acceptance in no way obligates the City of Indianapolis to said The Indianapolis Gas Company under said lease.

2. That the City of Indianapolis by this Board refuses to assume and be bound in any manner by the terms and provisions of said lease.

3. That the City of Indianapolis by this Board rejects and refuses to accept the assignment of said lease tendered by said Citizens Gas Company of Indianapolis to the City.

4. That the City of Indianapolis by this Board refuses to recognize said lease as an obligation of said Citizens Gas Company of Indianapolis which the City is bound to accept, or which in any respect whatsoever is one to which the property of said Citizens Gas Company of Indianapolis, when transferred to this City, is in any manner subject or which constitutes a charge upon such property.

5. That the following instrument be executed and served upon The Indianapolis Gas Company and recorded in the office of the Recorder of Marion County, Indiana;

Rejection of Assignment of Lease and Refusal to Assume,
Take Over, or Be Bound Thereby.

The City of Indianapolis, Indiana, by its Board of Directors for Utilities of its Department of Utilities, hereby refuses to take over, adopt, or assume the certain lease bearing date of September 30, 1913, executed by The Indianapolis Gas Company, an Indiana corporation, to Citizens Gas Company of Indianapolis, an Indiana corporation, and recorded in the office of the Recorder of Marion County, Indiana, in Miscellaneous Record 78 at page 257 and following; rejects the assignment of said lease tendered to said City by said Citizens Gas Company of Indianapolis; and refuses to recognize said lease as an obligation of said Citizens Gas Company of Indianapolis which this City is bound to accept,
149 or which in any respect whatsoever is one to which the property of said Citizens Gas Company of Indianapolis,

when transferred to said City, is in any manner subject or which constitutes a charge thereon.

Dated at Indianapolis, Indiana, September 9, 1935.

Board of Directors for Utilities of the
City of Indianapolis, Indiana.

By
Its President,

Attest:
Its Secretary.

State of Indiana, }
County of Marion, } ss.:

Before the undersigned, a notary public in and for said County and State, personally appeared said Henry L. Dithmer as President of the Board of Directors for Utilities of the City of Indianapolis and acknowledged the execution of the foregoing instrument as and for its and his voluntary act and deed.

.....
Notary Public.

6. That a copy of this resolution, certified by the Secretary of this Board, be served upon said The Indianapolis Gas Company as evidence of the attitude and intention of this Board.

7. That a copy of this resolution, certified by the Secretary of this Board, and a copy of said "Rejection of Assignment," be served upon said Citizens Gas Company of Indianapolis as evidence of the attitude and intention of this Board.

EXHIBIT D.

1004 Majestic Building,
Indianapolis, Indiana,
September 30, 1935.

Thompson, Rabb & Stevenson,
115 North Pennsylvania Street,
Indianapolis, Indiana.

Gentlemen:

Your letters of July 23, August 31, and September 16, 1935, have been brought to the attention of the Board of Di-

rectors of The Indianapolis Gas Company. An earlier meeting of the Board was prevented by the absence of many of its members.

In acknowledging these letters, I am directed by the Board of Directors to say that the Board assumes the validity of the lease entered into by it with the Citizens Gas Company of Indianapolis on September 30, 1913, which was approved by the Public Service Commission of Indiana, and that all of its provisions continue to have binding force.

If the Department of Public Utilities of the City of Indianapolis desires to discuss with The Indianapolis Gas Company any of the provisions of that lease, or any questions relating thereto, The Indianapolis Gas Company will, of course, be glad to take part in such a discussion at a time and place mutually agreeable to the representatives of the Company and the Department of Utilities.

Pending the determination of the questions which you may desire to consider, The Indianapolis Gas Company, not desiring to disrupt or inconvenience the public service, will be glad to enter into a mutual stipulation with you, if you so desire, that compliance with the terms of the lease shall be without prejudice to the legal rights and claims either of the Department of Utilities or of The Indianapolis Gas Company.

Very truly yours,
The Indianapolis Gas Company,
By Wm. J. Yule,
Secretary.
Indianapolis, Indiana.

EXHIBIT E.

March 2, 1936.

The Indianapolis Gas Company,
1004 Majestic Building,
Indianapolis, Indiana.

Gentlemen:

The Department of Utilities of the City of Indianapolis will pay to The Indianapolis Gas Company on or before March 25th, 1936, a sum equal to the semi-annual instalment of interest due on the outstanding bonds of The Indianapolis Gas Company, which interest is due March 30, 1936, in the estimated amount of \$171,575, together with the regular charges of the Trustee for disbursing such sum of money

and will also pay during the period of this agreement all State, County and Municipal taxes due on account of assessments on the property of The Indianapolis Gas Company covered by a lease between that Company and the Citizens Gas Company dated September 30, 1913.

The Department of Utilities will also pay the Federal income taxes of The Indianapolis Gas Company on account of any money paid by the Citizens Gas Company or the Department of Utilities to The Indianapolis Gas Company during the year 1935, and the instalment of Indiana Gross Income Tax due on or before April 15, 1936, and all insurance premiums on any property covered by said lease.

The Department of Utilities of the City of Indianapolis will also deposit in escrow with The Indiana National Bank of Indianapolis, Indiana, during the continuance of this agreement, a sum equal to the semi-annual instalments of interest on the presently outstanding bonds of The Indianapolis Gas Company and a sum equal to the dividends on the presently outstanding stock of said Company, said deposits to be made as and when the sums referred to shall become due in accordance with the terms of said lease, subject to the following conditions and agreements:

1st. That the amount so deposited shall be held by The Indiana National Bank at Indianapolis and shall be disbursed under the following conditions only:

(a) If a settlement of the presently existing controversy between The Indianapolis Gas Company and the Department of Utilities of the City of Indianapolis as to the validity of said lease dated September 30, 1913, and its binding force upon and as against the City of Indianapolis and this Department of Utilities of said City, or against any of the property acquired by said City or said Department, from Citizens Gas Company of Indianapolis, is reached and an agreement of settlement is made, then in accordance with the agreement of the parties.

(b) In the event no settlement of such controversy is reached, then if it shall be finally determined in a litigated case that said lease of September 30, 1913, is a valid and binding obligation upon the City of Indianapolis and/or the Department of Utilities of said City or upon the property acquired by such City or Department thereof from Citizens Gas Company of Indianapolis, the sum so deposited shall be delivered by the escrow to The Indianapolis Gas Company and shall be applied in the payment of the rent due under said lease.

(c) In the event of such litigation and a final determination that said lease of September 30, 1913, is not a valid and binding obligation on the City of Indianapolis or the Department of Utilities of said City or against any of the property of either there shall be first paid to The Indianapolis Gas Company out of said sum reasonable compensations for the use of the plant and property covered by said lease from July 1st, 1936, to the date of such final adjudication, such compensation to be fixed by agreement of the parties or a decree of Court, and then whatever remains shall be paid over by said escrow to the order of said Department of Utilities of the City of Indianapolis.

It is understood that the payments referred to, including the deposits made with the escrow, are made without prejudice to our position or rights and that we may continue to operate the plant and equipment covered by said lease of September 30, 1913, until the present controversy is adjusted or finally terminated by a decree of Court, without such operation or such payments or the execution of this agreement constituting an admission on our part that said lease of September 30, 1913, is valid or binding on the City of Indianapolis or said Department of Utilities of said City of Indianapolis, or any of its or their property.

It is further understood that your acceptance of this agreement and of such payment and your agreement that such sums may be deposited in escrow and that we may operate the plant referred to shall not prejudice your position or rights and that you are at full liberty to assert, notwithstanding this agreement and the payment made in pursuance thereof, that said lease is a valid and binding lease upon the City of Indianapolis and said Department of Utilities of said City or against any property of either in accordance with its terms.

Very truly yours,
Department of Utilities of the
City of Indianapolis,
By (signed) Henry L. Dithmer,
President of its Board of Directors.

Accepted this 2nd day of March, 1936.

The Indianapolis Gas Company,
By (signed) William G. Irwin,
its President.

Attest:

(Signed) Wm. J. Yule,
its Secretary.

Resolved, That the action of the Officers of this Company in executing on March 2, 1936, the agreement with the Department of Utilities of the City of Indianapolis be, and it is, hereby approved, ratified and confirmed.

The undersigned, Wm. J. Yule, as Secretary of The Indianapolis Gas Company, hereby certifies that the above is a true and complete copy of a resolution duly adopted by the Board of Directors of said Company at a regularly held meeting on the 4th day of March, 1936.

(Corporate Seal.)

(Signed) Wm. J. Yule,
*Secretary of The Indianapolis
Gas Company.*

Entered Oct 153 And afterwards to wit at the April Term of said Court, on the 22nd day of October, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Come now the Defendants City of Indianapolis, et al, by their solicitors, and file motion to amend answer, which motion is as follows:

(H. I.)

And the Court being duly advised grants said motion.

And said defendants City of Indianapolis, et al, now file amendment to answer, which is as follows:

154 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

Filed Oct.
1936.

AMENDMENT TO SEPARATE AND SEVERAL ANSWER AND COUNTERCLAIM OF DEFENDANTS THE CITY OF INDIANAPOLIS, A MUNICIPAL CORPORATION, WILLIAM J. MOONEY, A. DALLAS HITZ, ALFRED M. GLOSSBRENNER, EDWARD W. HARRIS AND CHARLES S. RAUH, AS MEMBERS OF THE BOARD OF TRUSTEES FOR UTILITIES OF THE CITY OF INDIANAPOLIS, HENRY L. DITHMER, BROADHURST ELSEY, FRED W. JUNGCLAUS, ROY SAHM, DONALD J. ANGUS, ISAAC E. WOODARD, AND RUSSELL J. RYAN, AS MEMBERS OF THE BOARD OF DIRECTORS FOR UTILITIES OF THE CITY OF INDIANAPOLIS.

James E. Deery,
Corporation Counsel.
City Hall, Indianapolis.

William H. Thompson,

Albert L. Rabb,

Thomas D. Stevenson,

1350 Consolidated Bldg.,

Indianapolis, Ind.

Solicitors for Said Answering Defendants.

155 * * (Caption—1844) * *

The City of Indianapolis, a municipal corporation, William J. Mooney, A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as Members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungclaus, Roy Sahn, Donald J. Angus, Isaac E. Woodard and Russell J. Ryan, as Members of the Board of Directors for Utilities of the City of Indianapolis, defendants in the above entitled cause, and by leave of Court first obtained, hereby amend their separate and several answer and counter-claim heretofore filed in this cause in the following particulars:

(1) By striking out Subdivision 19 of said answer and inserting a new subdivision 19 in the following words:

"19. With respect to Subdivision 19 of said complaint,

these answering defendants deny that upon the execution and delivery of said lease of September 30, 1913, the same became subject to the deed of trust in which plaintiff is successor trustee and they deny that said lease became a part of the trust estate covered by said mortgage to the same extent as though it had been executed and delivered prior to the execution and delivery of said deed of trust, or to any extent.

These answering defendants admit that the covenant in said lease of September 30, 1913, requiring the payment of rent was made for the benefit of The Indianapolis Gas Company and for the indirect benefit of others, including bondholders of said Company so far as the same was applicable to the payment of interest on the mortgage bonds of the bondholders, but deny that such lease was valid for a period

of 99 years or binding upon the City of Indianapolis as 156 Successor Trustee; and deny that the mortgage trustee is vested with a distinct and independent right to enforce the performance of the lessee's obligations and engagements under said lease in so far as the same directly affect any supposed rights of the holder of bonds, but on the contrary aver that The Indianapolis Gas Company, in the first instance, is the sole person with any legal right to enforce whatever obligations may exist under said lease of September 30, 1913, and that the plaintiff has no standing to seek to enforce the same until there has been a refusal on the part of The Indianapolis Gas Company so to do, which these answering defendants allege on information and belief has not occurred. They therefore allege that the plaintiff has no capacity to sue in this cause and that as hereinafter more particularly averred this suit is a collusive one and cannot be maintained by this plaintiff.

These answering defendants deny that said lease was valid when executed and further allege that the plaintiff or its predecessor trustee and the bondholders whom it alleges had by the terms of said lease of September 30, 1913, due notice and warning of the probable invalidity of said lease for any term longer than the period of the franchise contract heretofore referred to which expired on August 30, 1930, and such additional period as was reasonably necessary within which to complete the transfer of the trust assets to the City of Indianapolis as successor trustee, and allege that for the reasons hereinafter specifically set forth in subdivision 27 of

this answer said lease, if valid, was not valid for a longer period.

Alternatively, these answering defendants allege that the mortgage of which plaintiff is successor trustee does not constitute a lien upon the lease of September 30, 1913, or upon any rentals which might be due thereunder, and that if plaintiff has any right to maintain an action to determine the validity of said lease such right arises solely out of the fact that said lease was made for the indirect benefit of The Indianapolis Gas Company's bondholders and stockholders; that in any such action The Indianapolis Gas Company is an indispensable party because of the validity or invalidity of said lease cannot be determined as against these answering defendants in an action to which it is not a party and in which the judgment or decree would not be binding on it; that The Indianapolis Gas Company has been made and is a party defendant to this cause but should be aligned in interest with the plaintiff, and that upon such alignment being made there will be one plaintiff who is a citizen and resident of the State of Indiana and all the defendants are citizens and residents of the State of Indiana. Accordingly no diversity of citizenship exists, and there being no other ground of Federal jurisdiction alleged in the bill of complaint, it should be dismissed for lack of jurisdiction of the subject matter.

These answering defendants, however, deny that said lease was ever valid or enforceable for any period of time after the transfer of said trust property to the City of Indianapolis as successor trustee and deny that the plaintiff has any right to bring any action to enforce the performance thereof or obtain a declaration of the validity of said lease."

157 2. By adding subdivision 2½ to the prayer of said answer in the following words:

"2½. That if the Court should hold that the plaintiff has a sufficient interest to enable it to obtain a declaratory judgment as to the validity of said lease of September 30, 1913, that it adjudge and decree that The Indianapolis Gas Company is an indispensable party to such an action; that thereupon The Indianapolis Gas Company be aligned as a party plaintiff and this cause dismissed for want of jurisdiction of the subject matter because one plaintiff and all defendants are citizens and residents of the State of Indiana and no

federal jurisdiction exists on the ground of diversity of citizenship or otherwise."

James E. Deery,

Corporation Counsel.

William H. Thompson,

Albert L. Rabb,

Thomas D. Stevenson,

Solicitors for Said Answering Defendants.

October 21, 1936.

led Nov. 14,
1936.

158 And afterwards to wit at the November Term of said Court, on the 14th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Comes now the plaintiff, by its solicitors, and files answer to the counter-claim of certain defendants, which answer is as follows:

159 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—1844) * *

PLAINTIFF'S ANSWER TO THE COUNTERCLAIM OF CERTAIN DEFENDANTS.

Now comes The Chase National Bank of the City of New York, Trustee, the plaintiff in the above entitled cause, and, leave of Court having first been duly obtained, makes the following answer to the counterclaim of defendants, the City of Indianapolis and others:

Plaintiff admits that it is a corporation and is a citizen and resident of the State of New York and that it is a successor trustee under a deed of trust executed on the first day of October, 1902, by the defendant, The Indianapolis Gas Company, to secure the payment of certain bonds now outstanding in the total principal amount of \$6,881,000. Plaintiff denies that it is a corporation organized and existing under and by virtue of the laws of New York and alleges that in fact it is a corporation existing under and by virtue of the banking laws of the United States.

Plaintiff admits that on the 30th day of September, 1913, the defendants, The Indianapolis Gas Company and Citizens

Gas Company of Indianapolis, entered into a written lease for a term of ninety-nine years, a copy of which, marked "Exhibit B", is made a part of the plaintiff's bill of complaint.

160 Plaintiff admits that at the time of the execution of said lease the physical assets and property of the Citizens Gas Company of Indianapolis were the subject of a public charitable trust, created pursuant to the terms and conditions of a certain franchise and articles of incorporation and by-laws of said Citizens Gas Company of Indianapolis, the precise meaning and purpose of which is to be determined from the provisions thereof, for which purpose reference is made thereto; and plaintiff says that whether the trustee of said public charitable trust was the Citizens Gas Company of Indianapolis or its Board of Directors or the Board of Trustees created for the purpose of holding and voting all of said company's outstanding stock, if material to a determination of any of the issues presented in this cause, which plaintiff denies, is a question for the Court to decide, all of the pertinent facts relating thereto within plaintiff's knowledge being set forth in plaintiff's bill of complaint; and plaintiff admits that the trust property hereinabove referred to was, on or about September 9, 1935, transferred to the City of Indianapolis. As to the alleged controversy, and the particulars thereof, between the counterclaimants and defendant, The Indianapolis Gas Company, plaintiff has no independent or firsthand knowledge and therefore is unable to admit or deny the allegations with reference thereto.

Plaintiff admits that defendant, Citizens Gas Company of Indianapolis, tendered to the counterclaimants an assignment of said lease, a copy of which, marked "Exhibit F", is made a part of plaintiff's bill of complaint, and that the counterclaimants purported to refuse to accept said assignment.

Plaintiff admits that as Trustee under the Deed of Trust securing the bonds of The Indianapolis Gas Company
161 it asserts that said lease is valid and binding upon the counterclaimants, but denies that it has no legal right so to do.

Plaintiff denies that said lease of September 30, 1913, is not a valid or enforceable obligation against the counterclaimants or the property of said public charitable trust, from and after September 9, 1935.

Answering the allegations of the paragraph of defendants' said counterclaim marked "First", plaintiff denies each and every allegation in said paragraph contained.

Answering the allegations of the paragraph of defendants' counterclaim marked "Second", plaintiff admits that said lease contains provisions dealing with refinancing the outstanding bond issue of The Indianapolis Gas Company, with increases in annual rentals if gas is sold for less than certain prices stated therein, and dealing with the payment of the rent reserved therein, for the precise language of which provisions plaintiff refers to the lease itself, but plaintiff denies that any provision of said lease on these subjects is illegal or unenforceable. Plaintiff is not informed concerning the payments which have been made by the lessee for rent and taxes under the terms of said lease.

Answering the allegations of the paragraph of defendants' counterclaim marked "Third", plaintiff admits that at the time said lease was executed and continuously ever since, the City of Indianapolis was and has been a city of the first class. Respecting the provisions of the statutes of Indiana referred to in said paragraph "Third", plaintiff says that the relevant and applicable statutes speak for themselves, but plaintiff denies that the aforesaid lease was void when executed or is now void in any respect whatever, and denies that said lease could not be ratified. Plaintiff is without knowledge as to what appropriations have been made by the City of Indianapolis and as to what steps or actions may have been taken by the City of Indianapolis or by its Board of Public Works or its Common Council, and asks that strict proof be made of the allegations of said counterclaim on these subjects.

Answering the allegations of the paragraphs of defendants' said counterclaim marked "Fourth", "Fifth" and "Sixth", plaintiff denies each and every allegation in said paragraphs contained.

Plaintiff denies that the counterclaimants are entitled to any judgment against it declaring said lease of September 30, 1913, invalid or unenforceable against the counterclaimants or against the properties of Citizens Gas Company of Indianapolis taken over by the City of Indianapolis as successor trustee and denies each and every remaining allegation in defendant's counterclaim not specifically admitted or denied herein. For further answer plaintiff refers to and

incorporates herein each and every allegation in its bill of complaint contained.

Wherefore, plaintiff prays that the counterclaim of defendants, the City of Indianapolis and others, be dismissed and that it have judgment against said defendants for its costs.

Newton D. Baker,
Raymond T. Jackson,
William L. Taylor,
Solicitors for Plaintiff.

163 And afterwards to wit at the November Term of said Court on the 17th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit: Filed

Comes now the defendant Indianapolis Gas Company, by its solicitors, and files reply to counter-claim of co-defendants, which reply is as follows:

164 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

SEPARATE AND SEVERAL REPLY OF THE INDIANAPOLIS GAS COMPANY TO COUNTERCLAIM OF CO-DEFENDANTS.

The Indianapolis Gas Company, a Corporation, defendant in the above entitled cause, for its separate and several reply to the counterclaim of defendants, the City of Indianapolis, a municipal corporation, and others, filed herein, by way of such reply says:

It admits that The Chase National Bank of the City of New York is a corporation and is a citizen and resident of the State of New York and that it is a successor Trustee under a Deed of Trust executed by this counter-defendant securing bonds in the total principal amount of \$6,881,000.

That the Indianapolis Gas Company and the Citizens Gas Company of Indianapolis entered into said written lease for ninety-nine years, a copy of which, marked "Exhibit B", is made a part of said counterclaim. It denies that at the date

of execution of said lease the Citizens Gas Company of 165 Indianapolis was not the owner of the property it was then operating but alleges that it was only such property as should be held by that company at the expiration of its franchise as was then to be conveyed to the City of Indianapolis "subject to * * * (all) legal obligations against said company" which was impressed with a public charitable trust. And avers that said company held title thereto, with full power under the law to bind said property as Lessee of this counter-defendant's property by the execution of said lease, thereby obtaining the use and control of the property of this answering counter-defendant.

It denies that at said time the Citizens Gas Company of Indianapolis was not the owner of the gas manufacturing and distributing plant and property it was then operating and denies that it was without power and authority to execute said lease binding it and the property it then owned and held for performance of said lease the full period of ninety-nine years, and denies that the binding force of such lease was limited to the date of August 30, 1930, or to any other period, except as provided and expressed in and by the provisions of said lease.

It denies that the transfer or attempted transfer by Citizens Gas Company of its property or any part thereof to the City of Indianapolis on September 9, 1935, or at any time operated to release Citizens Gas Company, or any of the property it so transferred, from any of the obligations previously imposed thereon by the terms of the lease dated

September 30, 1913, but avers that each and all of the 166 provisions thereof are still binding upon each and all of the parties thereto, and upon the property of the Citizens Gas Company, and of the counter-claimants herein, who, this counter-defendant avers upon information and belief, did not pay to said Company any consideration for its said property, but accepted from it a wholly voluntary conveyance thereof, leaving the grantor penniless.

It admits that a controversy between it and counter-claimants as to whether or not said lease of September 30, 1913, is a valid and enforce obligation against these counter-claimants, and that this defendant, Indianapolis Gas Company, asserts and has asserted and it now avers that said lease is valid and binding as against and upon Citizens Gas Company and its assignee and all its property to

counter-claimants, and also binding and enforceable against these counter-claimants. This defendant avers, they received, accepted and took over all the property and assets, duties and obligations of Citizens Gas Company without any consideration paid to or received by said company, and thereby left it wholly without property and assets and without any ability to perform its contract obligation, and they took possession of the leased property as part thereof and proceeded to operate the same without notice to or action by this counter-defendant, or any owner thereof or person interested therein except only said Lessee.

It does not know whether or not Citizens Gas Company tendered to counter-claimants any assignment of the lease marked "Exhibit F", nor what counter-claimant did 167 with reference thereto, nor for what reason the Citizens Gas Company is made a party defendant to the counterclaim, and asks strict proof of the allegations concerning same.

It admits that The Chase National Bank as Trustee under said Mortgage Deed of Trust securing bonds of the Indianapolis Gas Company is asserting that the lease is valid and binding, but does not admit that it has no right to do so.

It denies that said lease of September 30, 1913, is not a valid or enforceable obligation against cross-complainants for any reason whatever and more particularly:

First. The Citizens Gas Company of Indianapolis has express as well as implied authority, by law and valid ordinances, to execute said lease for 99 years with the approval of the Public Service Commission of Indiana, which approval was given, and said lease was and continues to be valid and binding upon said Company and upon its assignees; and by accepting the voluntary assignment of all the property and franchises of said Company and by the acts they have done pursuant thereto, counter-claimants have become and are bound by the terms of said lease, which is not and never was ultra vires, but is and at all times has been valid.

168 Second. The Indianapolis Gas Company admits that the 99-year lease in question, made part of plaintiff's bill of complaint marked Exhibit B, contains provisions on the subjects of (a) refinancing the present outstanding bond issue of the Indianapolis Gas Company, and (b) as to an increase in the amount of the annual rental upon a contingency therein stated, and (c) to make certain payments, including taxes, all as written in said lease. But it denies that those pro-

visions are correctly recited in the counter claim and asks that the court will read said Exhibit B, which is by reference made part of this reply, to disclose what really are its provisions, and particularly denies that any such provisions, whether in themselves valid or not, vitiate or render invalid the said lease and its other provisions. And it avers that counter-claimants and their assignor, Citizens Gas Company, have had exclusive possession and control of the leased property for more than twenty-three years, to wit, since September 30, 1913, and continuously have had and now have exclusive knowledge of how much money they paid out which is designated by them as "including payments for the benefit of the stockholders and bondholders of the Indianapolis Gas Company and taxes," and the only knowledge this counter-defendant has thereof is such as said Citizens Gas Company of Indianapolis and they have given out; and counter-defendant disclaims knowledge of what such payments have averaged, and asks that counter-claimant make strict proof.

Third. Said counter-defendant admits the City of Indianapolis was and is a city of the first class, but expressly denies that on September 30th, 1913, there was any provision of law in force which made the execution of a lease of the property and franchises of the Indianapolis Gas Company or of any public utility whatever operating under an existing franchise to another public utility corporation also operating under a franchise, at all subject in any way or degree to the control or to the approval or to any action whatever on the part of the Board of Public Works or of the Common Council as provided by sections 85 and 254 of the Act of 1905, Chapter 129, page 219 (271, 396) "concerning municipal Corporations" (Burns Ind. Stat. Ann. 1933, sec. 48-1507 and 48-7302). And expressly denies that either of said sections of the statute (city charter) recited (in part) in the counter-claim is in any way pertinent or material to the issues joined in this action.

It is not informed as to what appropriations the City of Indianapolis may have made or may not have made prior to September 30, 1913, or at any other time and asks for strict proof of all and any pertinent facts in relation thereto.

It is informed, and therefore avers, that so far, if at all, as the sections of the statute above referred to or either of them otherwise would or might have limited the right and power of Citizens Gas Company and Indianapolis Gas Company, both operating public utilities in the City of Indianapolis, to enter into the lease under consideration dated Sep-

tember 30, 1913 and marked Exhibit B, the Public Service Commission Act of March 4, 1913 (Ch. 76, pp. 167-214; Burns Ind. 1933, secs. 54-101 to 54-725) superseded and to that extent repealed them, and that said lease is and continuously has been a valid and binding contract.

170 Fourth. It denies that said lease of September 30, 1913, was or is onerous or burdensome upon any owner of an interest in the Citizens Gas Company or its property, or exceeded the power of the parties to make it.

(a) The annual rent reserve was and is only a fair return on the value of the leased property of this counter-defendant.

(b) No requirement as to refinancing the outstanding bond issue of the Indianapolis Gas Company was burdensome or unfair, and moreover, any invalidity of such provisions, if established, would not and could not affect the binding force of the lease before and up until refinancing by the sale of bonds below par should or might become necessary, and none of said bonds will mature until the year 1952.

(c) Counter-defendant is informed and believes and therefore avers that neither at the time the lease was executed nor at any time since has a fair price for gas produced from the leased plant and marketed by the lessor been, nor is it now produced and marketed at a cost as low as 45 cents per 10000 cubic feet, nor in fact nearly so low as that rate, and that the restriction upon reducing the price of gas below that figure was and is only a reasonable restriction to prevent the lessee from selling gas produced by the plant of a rival competitor below the cost of production and sale while holding possession of its property under a lease, and thereby reducing and 171 destroying the value of such property and then turning it back to the lessor worthless and without earning value. And such restriction is in no sense burdensome to the lessee or to its assignees, these cross-complainants.

Fifth. This is merely an assertion of legal conclusions, in reply to which the Indianapolis Gas Company says that said lease is neither burdensome nor onerous in its character, but was and is binding upon the Citizens Gas Company of Indianapolis in relation in which it acquired and has held and now holds the leased premises, and is binding upon the City of Indianapolis and all the counter-claimants as assignees and upon all and every part of the property, franchises and assets of said lessee company, leaving it nothing with which to meet its own obligations, and as having taken possession of the leased premises so turned over to them by the Lessee on Sep-

tember 9, 1935, and operated them as part of said leasee's gas plant for a long time, without any right and privilege so to do except as taking and holding the same under said lessee company; and that it has no right under the law of Indiana now to reject the same while continuing to hold all the property and franchises of its grantor the lessee.

Sixth. That no terms of any Public Charitable Trust were violated by the execution of said lease; that the lease does not require the corporate existence of any corporation to continue for the entire term of the lease, whether of the trustee or the owner of any other relation. And on information and belief this counter-defendant avers that the Citizens Gas Company of Indianapolis was incorporated in 1905 for the term of 50 years, and that its term of existence has not expired; that under the law of Indiana in 1913 when this lease was made individuals or partners could lawfully own and operate a public utility franchise, and could and still can lawfully act as trustee of a Public Charitable Trust or any other kind.

That these counter-claimants are not entitled to any judgment whatever as against the Indianapolis Gas Company of Indianapolis, but that said lease is valid and binding and should be upheld, and denies each and every remaining allegation in defendants' counter-claim not specifically admitted or denied herein.

Wherefore said The Indianapolis Gas Company prays:

That the counter-claimants take nothing as against it, that said counter-claim be dismissed and that it have judgment against them for its costs, together with reasonable expenses of this defendant in the defense of this suit including reasonable attorney fees for its solicitors.

William R. Higgins

Lonis B. Fwbank

Solicitors for Said

Replying Defendant.

173 And afterwards towit at the November Term of said Court, on the 30th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Comes now the defendant Citizens Gas Company, by its solicitors, and files separate answer and counter-claim, which is as follows:

174 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

(*1) SEPARATE ANSWER AND THE COUNTERCLAIM
OF THE DEFENDANT CITIZENS GAS COMPANY
OF INDIANAPOLIS.

Citizens Gas Company of Indianapolis, a defendant in the above entitled cause, for its separate answer to the plaintiff's bill of complaint, and by way of counter-claim, says:

175 I.

(*2) This defendant admits the averments contained in Subdivision 1 of plaintiff's bill of complaint.

II.

This defendant admits the averments contained in Subdivision 2 of plaintiff's bill of complaint.

III.

This defendant admits the averments of Subdivision 3 of plaintiff's bill of complaint that this suit is brought by the plaintiff as Trustee under a deed of trust executed on the 1st day of October, 1902, by the defendant The Indianapolis Gas Company to secure the payment of the principal and interest of certain first mortgage bonds of the said The Indianapolis Gas Company; that the plaintiff seeks a declaratory judgment to determine and fix the rights of the plaintiff as Mortgagee and as Trustee as aforesaid, and to determine the rights of the plaintiff and the obli-

gations of the several defendants herein under or growing out of a certain lease indenture, as described in said plaintiff's bill of complaint, executed by and between the defendant The Indianapolis Gas Company and this defendant on September 30th, 1930, which said lease indenture, and the property leased thereunder, is part and parcel of the property of the trust of which the said plaintiff is Trustee, and that the plaintiff seeks further relief by way of injunction to preserve and protect the said property and the corpus of its trust, to prevent loss, waste and damage to the same, and to prevent irreparable loss

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(*3) and damage to the holders of said bonds; that there is a real and actual controversy as to the validity and as to the rights and obligations under the said lease.

This defendant has no knowledge as to whether this suit is brought by the plaintiff as Trustee for and on behalf of the holders and owners of said bonds and pursuant to the rights granted to the original Trustees and their successor or successors under said deed of trust, and at the specific instance and request of the holders and owners of \$415,000.00 in principal amount of said bonds, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

That this defendant makes no answer to the averment in said subdivision that the plaintiff has no plain, complete or adequate remedy at law, and that adequate relief can only be administered in a court of equity, for the reason that such averment is a conclusion upon an issue of law involved in this suit.

IV.

This defendant admits the averments contained in Subdivision 4 of plaintiff's bill of complaint.

V.

This defendant admits the averments contained in Subdivision 5 of plaintiff's bill of complaint.

VI.

177 This defendant admits the averments contained in (*4) Subdivision 6 of plaintiff's bill of complaint except that this defendant denies that it has at all times continued to operate under the provisions of the certain franchise and contract granted and entered into on the 25th day of August, 1905, by and between the City of Indianapolis and three individual citizens, viz., Alfred E. Potts, Frank D. Stalnaker and Lorenz Schmidt.

This defendant avers that from the date of its organization, on the 23d day of May, 1906, it continued to operate under the terms of the said franchise until August 27th, 1921, at which time, pursuant to the laws of the State of Indiana, it filed its declaration of surrender of said franchise and accepted in lieu thereof an indeterminate permit, under which it continued to operate as a public utility until September 9th, 1935. That on September 9th, 1935, this defendant conveyed and transferred to the City of Indianapolis all of the property owned and held by it of every nature and description whatsoever, and since said date this defendant has not been engaged in any business of any nature whatsoever and has owned and held no property of any nature or description whatsoever except as specifically set forth in Subdivision XVI of this answer. Said conveyance and transfer was made by this defendant in the manner and form, and pursuant to the right, duty and obligation of this defendant so to do as specifically set forth in Subdivision IX of this answer.

VII.

This defendant admits the averments contained in Subdivision 7 of plaintiff's bill of complaint except that this defendant makes no answer to any conclusion of law therein regarding the legal effect upon the issues involved in this suit of the facts averred therein.

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VIII.

This defendant admits the averments contained in Subdivision 8 of plaintiff's bill of complaint except that this defendant makes no answer to any conclusion

of law therein regarding the legal effect upon the issues involved in this suit of the facts averred therein.

IX.

This defendant admits the averments contained in Subdivision 9 of plaintiff's bill of complaint except that this defendant makes no answer to any conclusion of law therein regarding the legal effect upon the issues involved in this suit of the facts averred therein.

X.

This defendant admits the averments contained in Subdivision 10 of plaintiff's bill of complaint except that this defendant has no knowledge as to whether these additional bonds were widely sold and distributed and were acquired and purchased in reliance that the same were secured by a valid and enforceable ninety-nine year lease to a responsible corporation, that said corporation, its successors and assigns, were legally obligated to pay the interest thereon as a part of the rental under said lease, and that the validity of said lease had been judicially and finally determined by the Public Service Commission of Indiana and by the courts of Indiana, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof 179 (*6) thereof.

XI.

This defendant admits the averments contained in Subdivision 11 of plaintiff's bill of complaint.

XII.

This defendant admits the averments contained in Subdivision 12 of plaintiff's bill of complaint.

XIII.

This defendant admits the averments contained in Subdivision 13 of plaintiff's bill of complaint.

XIV.

This defendant admits the averments contained in Subdivision 14 of plaintiff's bill of complaint except that this defendant makes no answer to any conclusion of law therein regarding the legal effect upon the issues involved in this suit of the facts averred therein.

XV.

This defendant has no knowledge of the averments contained in Subdivision 15 of the plaintiff's bill of complaint, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

XVI.

This defendant denies the averments of Subdivision 16 of plaintiff's bill of complaint, but alleges that prior to September 9th, 1935, the City of Indianapolis deposited with The Indiana National Bank of Indianapolis, in a special 180

(*7) account to the credit of this defendant, the sums of \$2,500,000 and \$1,050,000 to be held on deposit by this defendant as trust funds to be used for the sole purpose of retiring, respectively, the outstanding common stock of this defendant at the par value thereof plus accumulated dividends thereon at the rate of 10% per annum, and retiring the outstanding preferred stock of this defendant at 105% of the par value thereof; that the City of Indianapolis, by and through the Board of Directors for Utilities of said City, by appropriate resolution, relinquished any and all interest which it may have had, if any, in the said funds, to the end that said funds might be held in trust solely and irrevocably for the benefit of the holders of such common and preferred stock entitled thereto; that this defendant by appropriate resolution adopted by this Board of Directors declared that such funds were to be held by this defendant solely and irrevocably for the sole benefit of the holders of the common and preferred stock of the Company entitled thereto, and that the trust created by the deposits, as aforesaid, should forever remain irrevocable.

That, as of November 1, 1936, all the outstanding common stock of this defendant had been retired as aforesaid except common stock of the total par value of \$1475.00, and all of the outstanding preferred stock of this defendant had been retired as aforesaid. The funds remaining in said trust fund have at all times been sufficient to retire, pay off and discharge the amount due the holders of the certificates for such remaining common stock upon the proper presentation of the said certificates.

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(*8) This defendant has no knowledge as to whether the City of Indianapolis paid, or provided for payment, direct to the holders of the outstanding bonds of this defendant the sum of \$2,858,500 representing the full amount of such outstanding bonds, with full knowledge of the obligations of this defendant under the said ninety-nine year lease and without notice to the plaintiff, or the holders of bonds of The Indianapolis Gas Company for whom plaintiff is Trustee, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

This defendant has no knowledge as to the averment that the City of Indianapolis had full knowledge that after the retirement of all of this defendant's capital stock, it would be without means for meeting or paying its said obligations and neither admits nor denies said averment but requests that plaintiff be required to make strict proof thereof. In connection therewith this defendant alleges that upon the conveyance and transfer of all of its property to the City of Indianapolis, in the manner and form, and pursuant to the rights, duties and obligations of this defendant so to do, as specifically set forth in Subdivision XX of this answer, on September 9th, 1935, this defendant had no further duty or obligation under the said ninety-nine year lease. For the reasons specifically set forth in Subdivision XX of this answer, this defendant, upon the conveyance and transfer of its property to the City of Indianapolis as aforesaid,

fully and completely discharged all obligations imposed

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(*9) upon it by the said ninety-nine year lease or otherwise, and this defendant thereupon was entirely released and discharged from any and

all future obligations or duties under the said ninety-nine year lease, and said ninety-nine year lease does not constitute a valid obligation of this defendant.

XVII.

This defendant admits the averments contained in Subdivision 17 of plaintiff's bill of complaint.

XVIII.

This defendant admits the averments contained in Subdivision 18 of plaintiff's bill of complaint that the City of Indianapolis, through its Department of Utilities, accepted the assignment and transfer under the terms and conditions as set forth in Exhibit E and adopted a resolution purporting to reject the assignment of the lease from The Indianapolis Gas Company to this defendant, and that the City of Indianapolis on September 9th, 1935, took possession of all and singular the properties of this defendant, and took over the operation of the said gas system.

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(*10) This defendant has no knowledge as to all the remaining averments contained in said subdivision and neither admits nor denies the same but requests that plaintiff be required to make strict proof thereof.

XIX.

This defendant makes no answer to the averments in Subdivision 19 of plaintiff's bill of complaint for the reason that all of such averments are conclusions upon issues of law involved in this suit.

XX.

This defendant denies the averments of Subdivision 20 of plaintiff's bill of complaint that by virtue of the findings and orders of the Public Service Commission of

Indiana, the final decree and judgment in the case of Fishback *vs.* Public Service Commission of Indiana, et al., the final decree and judgment in the case of Todd *vs.* Citizens Gas Company of Indianapolis, et al., and the final decree and judgment in the case of Williams *vs.* Citizens Gas Company of Indianapolis, et al., this defendant is estopped to deny that the said ninety-nine year lease, on the date of its execution, was and still is a valid obligation of this defendant. This defendant makes no answer to the averment that the defendants other than this defendant are estopped to deny that said ninety-nine year lease from the date of its execution was and still is a valid obligation of said other defendants, for the reason that such averment is a conclusion upon an issue of law involved in this suit which does not in any way affect this defendant or in which this defendant has any interest.

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(*11) This defendant alleges that it was organized on the 23d day of May, 1906, under the general laws of the State of Indiana providing for the incorporation of manufacturing and mining companies, its purposes and obligations being fixed and controlled entirely by its articles of incorporation, its by-laws, and the certain franchise and contract granted and entered into on the 25th day of August, 1905, by and between the City of Indianapolis and Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, copies of which instruments are made a part of plaintiff's bill of complaint, identified as Exhibit C, and are by reference made a part of this answer.

This defendant alleges that by virtue of such instruments this defendant became the Trustee of a public charitable trust for the benefit of the present and prospective gas consumers of the City of Indianapolis and all of the rights, property and assets then or thereafter acquired by this defendant were held by it as such Trustee, and for the purposes and upon the terms and conditions set forth in said instruments and no other. Said instruments provided, among other things, that when the outstanding preferred stock of this defendant shall have been retired and when the holders of the certificates representing the common stock of this defendant shall have received by dividends or otherwise upon such certificates an amount equal to the face value thereof together with interest thereon

at the rate provided for, the said certificates shall all be deemed fully paid and cancelled, and it shall thereupon be the duty of the Trustees and Directors of this defendant to convey to the City of Indianapolis all the right, title
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(*12) and interest of this defendant in all of its said property subject to all of the legal obligations of this defendant, to be owned and operated by the said City of Indianapolis, and that thereafter this defendant shall be wound up.

This defendant further alleges that from the date of its organization, as aforesaid, it continued to operate under the terms of the said franchise and contract until August 27th, 1921, at which time, pursuant to the laws of the State of Indiana, it filed its declaration of surrender of said franchise and accepted in lieu thereof an indeterminate permit, under which it continued to operate and hold the said property as a public utility until September 9th, 1935. This defendant avers that said indeterminate permit did not have the effect of modifying or rendering nugatory the terms of said franchise and contract insofar as they created and governed the public charitable trust as aforesaid, and the rights and obligations of this defendant as the Trustee thereof.

This defendant further alleges on information and belief that prior to the 30th day of September, 1913, and at all times subsequent thereto, this plaintiff, the defendant The Indianapolis Gas Company, and all of the holders of the said bonds either had actual knowledge of, or were bound in law by knowledge of, the terms and provisions of the said franchise and contract, the articles of incorporation of this defendant and its by-laws, and that this defendant at the end of the period of said franchise and contract, to wit: on August 30th, 1930, and when the conditions fixed therein precedent to the conveyance and transfer had been fully complied with, was under the
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(*13) duty and obligation to convey and transfer all of the said property to the City of Indianapolis, and to thereafter be wound up.

This defendant further alleges that prior to September 9th, 1935, all of the conditions fixed in the said franchise and contract, articles of incorporation and by-laws as precedent to the duty of this defendant to convey and transfer its said property as aforesaid had been fully and

completely performed so that on said date nothing further remained to be performed or done by the City of Indianapolis to entitle it in law to have all of said property conveyed and transferred to it as aforesaid. Accordingly, on said date, this defendant, by its proper corporate officers, executed and delivered instruments of conveyance and transfer of all of its said property to the City of Indianapolis, in the manner and form and pursuant to its duty so to do as aforesaid.

This defendant avers that the said ninety-nine year lease is not a valid and legal obligation of this defendant, but that it was entirely and completely released and discharged from any such obligation at the time such conveyance and transfer was made to the City of Indianapolis, on September 9th, 1935, for each of the reasons following:

(1) Said ninety-nine year lease and the obligation of this defendant thereunder has at all times been subject to the condition implied by law that this defendant was under the duty to make the conveyance and transfer as aforesaid, retire and discharge all of its outstanding preferred and common stock and thereafter wind up its affairs.

(2) Said ninety-nine year lease and the obligation
187 (*14)

of this defendant thereunder has at all times been subject to the condition implied by law that upon the termination of said franchise period and the conveyance and transfer as aforesaid, this defendant should be entirely and completely released and discharged from any further obligation as lessee under said lease.

(3) This defendant conveyed and transferred all of its said property to the City of Indianapolis subject to all outstanding legal obligations of this defendant, including the legal obligation of this defendant under said lease, if any there be, and whether or not the City of Indianapolis or the property so conveyed and transferred is subject to the said lease for any period beyond September 9th, 1935, this defendant has fully and completely, so far as the plaintiff and the other defendants herein are concerned, carried out and performed the purpose of its organization and the duties and obligations to which it was subject as hereinbefore set forth.

(4) The Indianapolis Gas Company, and this plaintiff, are estopped to deny that this defendant has been entirely and completely released and discharged from any

and all obligation under said lease as the result of the said conveyance and transfer, and that the said lease is not a valid obligation of this defendant at this time.

XXI.

This defendant denies the averments of Subdivision 20 of plaintiff's bill of complaint that by reason of the operations of the Citizens Gas Company of Indianapolis, the acceptance by it and by the City of Indianapolis for more than twenty-one years of all of the benefits under
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(*15) said ninety-nine year lease, including the benefits of consolidated operation of the leased property, and by reason of the acts of the defendants in causing the Trustee under the aforesaid mortgage deed of trust to authenticate and deliver additional bonds to reimburse the Citizens Gas Company of Indianapolis for capital expenditures on account of extensions and betterments to the plant and system of The Indianapolis Gas Company theretofore made by it as lessee, and by reason of the other acts of the several defendants in causing said bonds to be sold and distributed as bonds secured by a valid ninety-nine year lease to the Citizens Gas Company of Indianapolis, its successors in trust and assigns, this defendant is estopped to deny that the said ninety-nine year lease is a valid obligation of this defendant. This defendant makes no answer to the averment that the defendants other than this defendant are estopped to deny that said ninety-nine year lease from the date of its execution was and still is a valid obligation of said other defendants, for the reason that such averment is a conclusion upon an issue of law involved in this suit which does not in any way affect this defendant or in which this defendant has any interest.

This defendant avers that for the reasons specifically set forth in Subdivision XX of this answer, the said ninety-nine year lease is not a valid and legal obligation of this defendant but that it was entirely and completely released and discharged from any such obligation at the time such conveyance and transfer was made to the City of Indianapolis, on September 9th, 1935.

(*16)

XXII.

This defendant makes no answer to the averments contained in Subdivision 22 of plaintiff's bill of complaint for the reason that such averments are conclusions upon issues of law involved in this suit which do not in any way affect this defendant or in which this defendant has any interest.

XXIII.

This defendant has no knowledge as to the averments contained in Subdivision 23 of plaintiff's bill of complaint, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

XXIV.

This defendant has no knowledge as to the averments contained in Subdivision 24 of plaintiff's bill of complaint, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

XXV.

This defendant has no knowledge as to the averments contained in Subdivision 25 of plaintiff's bill of complaint, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

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(*17)

Counterclaim

This defendant, by way of counterclaim, complains of the plaintiff, The Chase National Bank of the City of New York, as Trustee, The Indianapolis Gas Company, an Indiana corporation, the City of Indianapolis, a municipal corporation, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris, and Charles H. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungelaus, Roy Sahn, David J. Angus, Isaac E. Woodward, and Russell J. Ryan, as members of the Board of Directors for Utilities of the City of Indianapolis, and by way of cross counterclaim alleges:

That the plaintiff, The Chase National Bank of the City of New York, is a corporation organized and existing under and by virtue of the laws of New York and is a citizen and resident of the State of New York; that it is a Successor-Trustee under a deed of trust executed on the 1st day of October, 1902, by the defendant The Indianapolis Gas Company to secure the payment of the principal and interest of certain bonds which are now outstanding in the hands of the public in the total principal amount of \$6,881,000.

That this defendant was organized on the 23d day of May, 1906, under the general laws of the State of Indiana providing for the incorporation of manufacturing and mining companies, its purposes and obligations being fixed and controlled entirely by its articles of incorporation, its

by-laws, and the certain franchise and contract granted 191 (*18)

and entered into on the 25th day of August, 1905 by and between the City of Indianapolis and Alfred F. Potts, Frank D. Stalnaker and Lorenz Schmidt, copies of which instruments are made a part of plaintiff's bill of complaint, identified as Exhibit C, and are by reference made a part of this counterclaim.

That by virtue of such instruments this defendant became the Trustee of a public charitable trust for the benefit of the present and prospective gas consumers of the City of Indianapolis and all of the rights, property and assets then or thereafter acquired by this defendant were held by it as such Trustee, and for the purposes and upon the terms and conditions set forth in said instruments and no other. Said instruments provided, among other things, that when the outstanding preferred stock of this defendant shall have been retired and when the holders of the certificates representing the common stock of this defendant shall have received by dividends or otherwise upon such certificates an amount equal to the face value thereof together with interest thereon at the rate provided for, the said certificates shall all be deemed fully paid and cancelled, and it shall thereupon be the duty of the Trustees and Directors of this defendant to convey to the City of Indianapolis all the right, title and interest of this defendant in all of its said property subject to all of the legal obligations of this defendant, to be owned and operated by the said City of Indianapolis, and

that thereafter this defendant shall be wound up.

That from the date of its organization, as aforesaid,

it continued to operate under the terms of the said franchise and contract until August 27th, 1921, at which time,

pursuant to the laws of the State of Indiana, it filed its declaration of surrender of said franchise and accepted in lieu thereof an indeterminate permit, under which it continued to operate and hold the said property as a public utility until September 9th, 1935. This defendant avers that said indeterminate permit did not have the effect of modifying or rendering nugatory the terms of said franchise and contract insofar as they created and governed the public charitable trust as aforesaid, and the rights and obligations of this defendant as the Trustee thereof.

That on the 30th day of September, 1913, this defendant and the defendant The Indianapolis Gas Company entered into a written lease, a copy of which written lease, marked "Exhibit B", is made a part of the plaintiff's bill of complaint and by reference a part of this counterclaim.

That prior to the 30th day of September, 1913, and at all times subsequent thereto, this plaintiff, the defendant The Indianapolis Gas Company, and all of the holders of the said bonds either had actual knowledge of, or were bound in law by knowledge of, the terms and provisions of the said franchise and contract, the articles of incorporation of this defendant and its by-laws, and that this defendant at the end of the period of said franchise and contract, to wit: on August 30th, 1930, and when the conditions fixed therein precedent to the conveyance and transfer had been fully complied with, was under the

(*20) duty and obligation to convey and transfer all of the said property to the City of Indianapolis, and to thereafter be wound up.

That prior to September 9th, 1935, all of the conditions fixed in the said franchise and contract, articles of incorporation and by-laws as precedent to the duty of this defendant to convey and transfer its said property as aforesaid had been fully and completely performed so that on said date nothing further remained to be performed or done by the City of Indianapolis to entitle it in law to

have all of said property conveyed and transferred to it as aforesaid. Accordingly, on said date, this defendant, by its proper corporate officers, executed and delivered instruments of conveyance and transfer of all of its said property to the City of Indianapolis, in the manner and form and pursuant to its duty so to do as aforesaid.

That there is a present existing controversy between this defendant and the plaintiff and the defendant The Indianapolis Gas Company as to whether the said ninety-nine year lease is still a valid and enforceable obligation against this defendant; that the defendants other than this defendant and The Indianapolis Gas Company have an interest in the determination of said controversy for the reason that they are asserting that the assignment of said lease, a copy of which is marked "Exhibit F" and made a part of plaintiff's complaint and by reference a part of this counterclaim, was not accepted by said defendants and that they had the legal right to accept the assignment of all of the remainder

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(*21) of the property of this defendant and to refuse to accept the assignment of said lease.

This defendant avers that the said ninety-nine year lease is not a valid and legal obligation of this defendant, but that it was entirely and completely released and discharged from any such obligation at the time such conveyance and transfer was made to the City of Indianapolis, on September 9th, 1935, for each of the reasons following:

(1) Said ninety-nine year lease and the obligation of this defendant thereunder has at all times been subject to the condition implied by law and this defendant was under the duty to make the conveyance and transfer as aforesaid, retire and discharge all of its outstanding preferred and common stock and thereafter wind up its affairs.

(2) Said ninety-nine year lease and the obligation of this defendant thereunder has at all times been subject to the condition implied by law that upon the termination of said franchise period and the conveyance and transfer as aforesaid, this defendant should be entirely and completely released and discharged from any further obligation as lessee under said lease.

(3) This defendant conveyed and transferred all of

its said property to the City of Indianapolis subject to all outstanding legal obligations of this defendant, including the legal obligation of this defendant under said lease, if any there be, and whether or not the City of Indianapolis or the property so conveyed and transferred is subject to the said lease for any period beyond September 9th, 1935.

(*22) tember 9th, 1935, this defendant has fully and completely, so far as the plaintiff and the other defendants herein are concerned, carried out and performed the purpose of its organization and the duties and obligations to which it was subject as hereinbefore set forth.

(4) The Indianapolis Gas Company, and this plaintiff, are estopped to deny that this defendant has been entirely and completely released and discharged from any and all obligation under said lease as the result of the said conveyance and transfer, and that the said lease is not a valid obligation of this defendant at this time.

(5) This defendant fully and completely complied with all the terms and provisions of the said ninety-nine year lease up to and including September 9th, 1935, on which date this defendant, pursuant to its duty so to do as aforesaid, conveyed, transferred and assigned all of its said property, including its interest in and to the said ninety-nine year lease, to the City of Indianapolis, subject to all the legal obligations of this defendant, including the legal obligation under the said ninety-nine year lease, if any there be, and, whether or not the City of Indianapolis had the legal right to refuse to accept the assignment of said lease and to refuse to become bound by the obligations thereof, this defendant has fully and completely performed all of its obligations under the said ninety-nine year lease and is entirely and completely released from any obligation thereunder.

That this defendant is entitled to a judgment and declaration of this Court that the said ninety-nine year 196

(*23) lease is not a valid and binding obligation against this defendant, but that it was entirely and completely released and discharged from any such obligation at the time such conveyance, transfer and assignment was made to the City of Indianapolis, on September 9th, 1935.

This defendant further alleges that the defendants

other than this defendant and The Indianapolis Gas company, are asserting that the City of Indianapolis not only has the right to reject the assignment of the said lease as aforesaid, but that the said City of Indianapolis had the legal right to accept the transfer of all the remainder of the property of this defendant subject to all outstanding legal obligations of this defendant except the legal obligation under the said lease, if any there be. This defendant avers that, for the reasons hereinbefore specifically set forth and by virtue of the acceptance of the transfer of such property, the City of Indianapolis has assumed each and all of the obligations of the said lease, if any there be, and that all of the said property so transferred to and accepted by the said City of Indianapolis is subject to the charge and obligation of the said lease, if any there be; and that this defendant is entitled to a judgment and declaration accordingly.

This defendant avers that it, its directors, officers and trustees, had complete power and authority to execute and enter into the said lease in the manner and form as aforesaid, and admits that the said lease was valid and binding upon this defendant and its property from the date of the execution thereof to the time

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(*24) this defendant conveyed, transferred and assigned all of its property to the City of Indianapolis as aforesaid. For the reasons and upon the facts as hereinbefore specifically set forth, the primary controversy in this proceeding, is whether or not the City of Indianapolis and the property conveyed and transferred to it as aforesaid, are subject to the provisions of the said lease for the remainder of the term thereof as a result of the conveyance, transfer and assignment as aforesaid. Whether or not the City of Indianapolis and such property are subject to the said lease, this defendant has fully and lawfully performed its duties as Trustee of the said public charitable trust and is under no further obligation to the plaintiff or other defendants herein. This defendant, therefore, has no interest in and assumes no position with reference to the primary controversy between the plaintiff herein, The Indianapolis Gas Company and the other defendants herein, as aforesaid.

Wherefore, this defendant and counterclaimant prays:

(1) That plaintiff's bill of complaint be dismissed for want of equity.

(2) That this Court adjudge and declare that the said ninety-nine year lease is not a valid or legal obligation of this defendant, and that this defendant was entirely and completely released and discharged from any present or future obligation or liability under the said lease upon the conveyance, transfer and assignment of all of its said property to the City of Indianapolis, on September 9th, 1935.

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(*25) (3) That this Court adjudge and declared that by virtue of the transfer of this property to the City of Indianapolis as hereinbefore set forth, the said City of Indianapolis has assumed each and all of the obligations of said lease, if any there be, and that all of the property so transferred and accepted by the said City of Indianapolis is subject to the charge and obligation of the said lease, if any there be.

(4) For its costs in this action and all other proper relief agreeable to equity and good conscience.

Smith, Remster, Hornbook & Smith

*Solicitors for the Citizens Gas Company
of Indianapolis.*

Paul Y. Davis

William G. Sparks

Of Counsel

199 (Entry for November 30, 1936, continued.)

And said defendant Citizens Gas Company also files separate reply to counterclaim of defendants City of Indianapolis, et al., which separate reply is as follows:

200 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

Filed Nov. 30,
1936

SEPARATE REPLY OF CITIZENS GAS COMPANY OF INDIANAPOLIS TO THE COUNTERCLAIM OF THE DEFENDANTS THE CITY OF INDIANAPOLIS, A MUNICIPAL CORPORATION, WILLIAM J. MOONEY, A. DALLAS HITZ, ALFRED M. GLOSSBRENNER, EDWARD W. HARRIS AND CHARLES S. RAUH, AS MEMBERS OF THE BOARD OF TRUSTEES FOR UTILITIES OF THE CITY OF INDIANAPOLIS, HENRY L. DITHMER, BROADHURST ELSEY, FRED W. JUNGCLAUS, ROY SAHM, DAVID J. ANGUS, ISAAC E. WOODARD AND RUSSELL J. RYAN, AS MEMBERS OF THE BOARD OF DIRECTORS FOR UTILITIES OF THE CITY OF INDIANAPOLIS.

201 Citizens Gas Company of Indianapolis, a defendant in the above entitled cause, for its separate reply to the counterclaim of the defendants The City of Indianapolis, a municipal corporation, William J. Mooney, A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungclaus, Roy Sahn, David J. Angus, Isaac E. Woodard and Russell J. Ryan, as members of the Board of Directors for Utilities of the City of Indianapolis, says:

I.

This defendant admits the averments contained in Paragraph 1 of said defendants' counterclaim.

II.

This defendant admits the averments contained in Paragraph 2 of said defendants' counterclaim.

III.

This defendant admits the averments contained in Paragraph 3 of said defendants' counterclaim.

IV.

This defendant admits the averments contained in Paragraph 4 of said defendants' counterclaim.

V.

This defendant admits the averments contained in Paragraph 5 of said defendants' counterclaim.

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VI.

This defendant admits the averments contained in Paragraph 6 of said defendants' counterclaim.

VII.

This defendant admits the averments contained in Paragraph 7 of said defendants' counterclaim, except that this defendant makes no answer to the conclusion of law therein that the plaintiff herein has no legal right to assert that the said lease is valid and binding.

VIII.

With respect to Paragraph 8 of said defendants' counterclaim, this defendant denies that said lease of September 30th, 1913, is not a valid or enforceable obligation against the said counterclaimants or the property of said public charitable trust from and after September 9th, 1935, to the extent and for the reasons following:

(1) The conveyance, transfer and assignment by this defendant of all of its property to the City of Indianapolis in the manner and form and pursuant to its right and duty so to do, as specifically set forth in this defendant's counterclaim in this action, the averments of which are by reference made a part of this reply, entirely and completely released and discharged this defendant from any present or future obligation or liability under the said lease as of the date of said conveyance, transfer and assignment.

203 (2) This defendant conveyed, transferred and assigned all of its property to the City of Indianapolis subject to all outstanding legal obligations of this defendant, including the legal obligation of this defendant under said lease,

if any there be, and the said counterclaimants accepted the conveyance and transfer of said property and immediately took possession thereof. This defendant avers that if it is subject to any present or future obligation or liability under the said lease, that as a result of the said conveyance, transfer and assignment, the said City of Indianapolis has assumed the said lease and is subject to any such obligation, and the said property is subject to any such obligation of the said lease.

(3) As a result of the conveyance, transfer and assignment of said property to the City of Indianapolis in the manner and form and pursuant to its right and duty so to do as aforesaid, which conveyance, transfer and assignment was accepted by the said City of Indianapolis, the said counterclaimants are estopped to deny that it has not assumed each and all of the obligations of said lease, if any there be, and that all of the property so transferred and accepted by the said City is subject to the charge and obligation of the said lease, if any there be.

IX.

With respect to Paragraph 9 of said defendants' counterclaim this defendant denies that the said lease of September 30th, 1913, is not a valid and binding obligation against the said counterclaimants and is invalid, void and unenforceable against said counterclaimants and against said trust property taken over by the City of Indianapolis, to the extent and for the reasons hereinbefore specifically set forth 204 in Subdivision VIII of this reply.

Wherefore, this defendant prays:

(1) That the said defendants' counterclaim be dismissed for want of equity.

(2) For its costs herein and all other proper relief agreeable to equity and good conscience.

Charles Remster,
Albert P. Smith,
Paul Y. Davis,
Kurt F. Pantzer,
Ernest R. Baltzell,
William G. Sparks,

*Solicitors for the Citizens Gas Company
of Indianapolis.*

(Signed) Paul Y. Davis,

(Signed) William G. Sparks,
Of Counsel.

Dec.
1936.

205 And afterwards towit at the November Term of said Court on the 22nd day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Came now the defendants City of Indianapolis, et al., by their solicitors, and file separate reply to counter-claim of Citizens Gas Company of Indianapolis, which reply is as follows:

206 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

SEPARATE REPLY OF CITY OF INDIANAPOLIS, ET AL., TO COUNTERCLAIM OF CITIZENS GAS COMPANY OF INDIANAPOLIS.

Defendants City of Indianapolis, a municipal corporation, Willim J. Mooney, A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Brodehurst Elsey, Fred W. Jungelaus, Roy Sahn, Isaac I. Woodard, Donald J. Angus and Russell J. Ryan, as members of the Board of Directors for Utilities of the City of Indianapolis, for their separate and several reply to the counterclaim of defendant Citizens Gas Company of Indianapolis, say:

1. They admit the averments of the first paragraph of said counterclaim, but aver that The Chase National Bank of the City of New York is a National Banking Association under the laws of the United States; and aver also, upon information and belief, that approximately \$120,000 aggregate face value of said bonds are not in the hands of the public but are held by defendant The Indianapolis Gas Company.

2. They admit the averments of the second paragraph of said counterclaim.

3. They admit the averments of the third paragraph of said counterclaim and aver that the term of such trusteeship expired on or prior to September 9, 1935.

207 4. They admit the averments of the fourth paragraph of said counterclaim.

5. They admit the averments of the fifth paragraph of

said counterclaim but they deny that said lease was ever valid and enforceable.

6. They admit the averments of the sixth paragraph of said counterclaim.

7. They admit the averments of the seventh paragraph of said counterclaim; but deny that there was any obligation on said defendant Citizens Gas Company to assign and transfer to the City of Indianapolis the certain ninety-nine year lease executed by defendant The Indianapolis Gas Company to defendant Citizens Gas Company of Indianapolis, or in the part of the City of Indianapolis to accept it; and they aver that the assignment of said lease to the City of Indianapolis was expressly rejected and that it was not assumed by the City of Indianapolis and is not valid or enforceable against it.

8. They admit that there is a present existing controversy as to the force and effect of said lease, but they aver that said lease is wholly invalid and unenforceable as against defendant City of Indianapolis; and they assert that to the extent that defendant Citizens Gas Company of Indianapolis seeks a declaration of the validity of said lease, and to the further extent that it seeks a declaration that said lease, if valid, is binding against said City of Indianapolis, said defendant Citizens Gas Company of Indianapolis is an indispensable party aligned in interest with plaintiff and with defendant The Indianapolis Gas Company; and being so aligned, and an Indiana corporation, the diversity of citizenship necessary to sustain the jurisdiction of the court over this cause is destroyed.

9. They make no answer to the conclusions of law contained in the ninth paragraph of said counterclaim, they admit that defendant Citizens Gas Company of Indianapolis conveyed and transferred all of its property to the City of Indianapolis subject to all outstanding legal obligations of that Company, but they aver that said lease was not and is not one of such obligations, and they aver that the tendered assignment of said lease was expressly rejected by the City of Indianapolis, that said lease was not assumed by the City, and is wholly invalid and unenforceable as against defendant City of Indianapolis; and they assert that to the extent that defendant Citizens Gas Company of Indianapolis seeks a declaration of the validity of said lease and to the further extent that it seeks a declaration that said lease, if valid, is binding against said City of Indianapolis, said defendant

Citizens Gas Company of Indianapolis is an indispensable party aligned in interest with plaintiff and with defendant The Indianapolis Gas Company; and being so aligned, and an Indiana corporation, the diversity of citizenship necessary to sustain the jurisdiction of the court over this cause is destroyed. It is admitted that no liability now exists against defendant Citizens Gas Company of Indianapolis under or on account of said lease, up to and including September 9, 1935.

10. They make no answer to the conclusions of law that constitute the tenth paragraph of said counterclaim, but they aver that said lease is wholly invalid and unenforceable as against defendant City of Indianapolis; and they assert that to the extent that defendant Citizens Gas Company of Indianapolis seeks a declaration of the validity of said lease and to the further extent that it seeks a declaration that said lease, if valid, is binding against said City of Indianapolis, said defendant Citizens Gas Company of Indianapolis is an indispensable party aligned in interest with plaintiff and with defendant The Indianapolis Gas Company; and being so aligned, and an Indiana corporation, the diversity of citizenship necessary to sustain the jurisdiction of the court over this cause is destroyed.

209 11. They admit that they are asserting that the city of Indianapolis had the right to reject an assignment of said lease and to accept the property of said Citizens Gas Company of Indianapolis free from any supposed obligation under said lease; but they aver that said lease is wholly invalid and unenforceable as against defendant City of Indianapolis; and they assert that to the extent that defendant Citizens Gas Company of Indianapolis seeks a declaration of the validity of said lease and to the further extent that it seeks a declaration that said lease, if valid, is binding against said City of Indianapolis, said defendant Citizens Gas Company of Indianapolis is an indispensable party aligned in interest with plaintiff and with defendant The Indianapolis Gas Company; and being so aligned, and an Indiana corporation, the diversity of citizenship necessary to sustain the jurisdiction of the court over this cause is destroyed.

12. They deny that defendant Citizens Gas Company of Indianapolis, its directors, officers, and/or trustees, had any right at all to execute and enter into said lease, for the reasons set out in paragraph 27 of the answer of these defend-

ants in this cause; and aver that said lease is wholly invalid and unenforceable as against defendant City of Indianapolis, and they assert that to the extent that defendant Citizens Gas Company of Indianapolis seeks a declaration of the validity of said lease, and to the further extent that it seeks a declaration that said lease, if valid, is binding against said City of Indianapolis, said defendant Citizens Gas Company of Indianapolis is an indispensable party aligned in interest with plaintiff and with defendant The Indianapolis Gas Company; and being so aligned, and an Indiana corporation, the diversity of citizenship necessary to sustain the jurisdiction of the court over this cause is destroyed.

210 Wherefore, said defendants pray that said counterclaim be dismissed with costs; and for all other proper relief.

Thompson, Rabb & Stevenson
Solicitors for said Replying Defendants.

211 And afterwards to wit at the November Term of said Court, on the 6th day of January, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Filed Jan. 6
1937.

Comes now the plaintiff, by its solicitors, and files answer to counterclaim of the defendant Citizens Gas Company of Indianapolis, which answer is as follows:

212 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

**PLAINTIFF'S ANSWER TO THE COUNTERCLAIM OF
DEFENDANT, CITIZENS GAS COMPANY OF INDIANAPOLIS.**

Now comes The Chase National Bank of the City of New York, Trustee, the plaintiff herein, and makes the following answer to the counterclaim of defendant, Citizens Gas Company of Indianapolis:

Answering the second paragraph on page 17 of said defendant's separate answer and counterclaim, plaintiff denies that it is a corporation organized and existing under and by virtue of the laws of New York, alleges that in fact it is a

corporation existing under and virtue of the banking laws of the United States, and admits the remaining allegations contained in said paragraph.

Answering the paragraphs commencing at the bottom of page 17, plaintiff admits that the defendant, Citizens Gas Company, was duly organized as therein alleged, that it adopted certain articles of incorporation and by-laws and that it accepted a certain franchise and contract, copies of which instruments are identified as "Exhibits C" to plaintiff's Bill of Complaint, but plaintiff denies that said defendant's purposes or its obligations are fixed and controlled entirely by said instruments.

213 Answering the paragraph commencing at the top of page 18, plaintiff admits that by virtue of said franchise, articles of incorporation and by-laws a public charitable trust was created for the benefit of present and prospective gas consumers of the City of Indianapolis, that all of the rights, property and assets then or thereafter acquired by defendant, Citizens Gas Company, were the subject of this public charitable trust, and that said instruments contained provisions substantially as set forth in the aforesaid paragraph. Plaintiff denies that the aforesaid rights, property and assets were held by said defendant for no other purposes than those set forth in said instruments and denies that they were held by said defendant upon no other terms and conditions than those set forth therein; and plaintiff says that whether the trustees of said public charitable trust was said defendant itself or its Board of Directors of the Board of Trustees created for the purpose of holding and voting all of its outstanding stock, if material to a determination of any of the issues presented in this cause, which plaintiff denies, is a question for the decision of the Court, for which purpose reference is made to plaintiff's Bill of Complaint, wherein all the pertinent facts relating thereto within plaintiff's knowledge are fully set forth.

Answering the paragraph commencing at the bottom of page 18, plaintiff admits that defendant, Citizens Gas Company, began to operate under the terms of the aforesaid franchise and contract from the date of its organization. Plaintiff is not informed concerning the remaining allegations contained in said paragraph and therefore neither admits or denies the same, but demands strict proof thereof, if deemed material.

Plaintiff admits the allegations contained in the first complete paragraph on page 19.

214 Answering the paragraph commencing at the bottom of page 19, plaintiff admits that it had knowledge some time after the execution thereof of the 99 year lease dated September 30, 1913, between The Indianapolis Gas Company and Citizens Gas Company of Indianapolis and of the approval of said lease in the proceedings referred to in plaintiff's Bill of Complaint; but plaintiff denies that it had actual or constructive knowledge, as alleged in the said paragraph of defendant's counter-claim, of any of the terms and provisions of the aforesaid franchise and contract, or of the articles of incorporation or by-laws of defendant, Citizens Gas Company. Plaintiff is not informed of the extent to which, or the time when, the holders of bonds for which it is trustee had actual knowledge, if any, of the terms and provisions of said franchise and contract, articles of incorporation and by-laws, but denies that any of the holders of said bonds may be charged with constructive knowledge thereof, and if actual knowledge of any of said terms and provisions is material, plaintiff asks that strict proof be made thereof.

Answering the first complete paragraph on page 20, plaintiff admits that on or about September 9, 1935, defendant, Citizens Gas Company, executed and delivered certain instruments of conveyance and transfer of all its property to the City of Indianapolis, but plaintiff is not informed whether all the conditions fixed by said defendant's franchise or by its articles of incorporation or by its by-laws as precedent to said defendant's obligation to convey its property to the City of Indianapolis had been fully and completely performed prior to the time of said conveyance and transfer and plaintiff asks strict proof thereof, if deemed material.

Plaintiff admits all the allegations contained in the paragraph commencing at the bottom of page 20.

215 Plaintiff denies each and every allegation contained in the first complete paragraph on page 21.

Plaintiff denies each and every allegation contained in the paragraph on page 21 marked "(1)".

Plaintiff denies each and every allegation contained in the paragraph on page 21 marked "(2)".

Answering the paragraph on page 21 marked "(3)", plaintiff admits that defendant, Citizens Gas Company, conveyed and transferred all its property to the City of Indianapolis, subject to all outstanding legal obligations of said defendant,

including its legal obligations under said lease, but plaintiff denies that said defendant has completely carried out or has performed the purposes of its organization and denies that said defendant has fully and completely, so far as plaintiff is concerned, carried out or performed the duties and obligations to which it was and is subject.

Plaintiff denies each and every allegation contained in the paragraph on page 22 marked "(4)".

Answering the paragraph on page 22 marked "(5)", plaintiff admits that on or about September 9, 1935, defendant, Citizens Gas Company, conveyed all its property, including its interest in said lease, to the City of Indianapolis, subject to all the legal obligations of said defendant, including its obligations under said lease; but plaintiff is not informed whether said defendant fully and completely complied with all the terms and provisions of said lease up to and including September 9, 1935, and asks that strict proof be made thereof, and plaintiff denies that said defendant has fully and completely performed all of its obligations under said lease and denies that said defendant is released from any obligations thereunder.

216 Plaintiff denies each and every allegation contained in the paragraph commencing at the bottom of page 22.

Plaintiff admits all of the allegations contained in the first complete paragraph on page 23.

Answering the paragraph commencing at the bottom of page 23, plaintiff admits that defendant, Citizens Gas Company, its directors, officers, and trustees, had complete power and authority to execute and to enter into the said lease, and plaintiff admits that said lease was valid and binding upon said defendant and its property from the date of the execution thereof. Plaintiff denies that said lease ceased to be valid and binding upon said defendant when it conveyed its property to the City of Indianapolis, denies that said defendant has fully and lawfully performed its duties under the aforesaid public charitable trust, denies that said defendant is under no further obligation to the plaintiff, and denies that said defendant has no interest in the controversy between plaintiff and the other defendants herein.

Plaintiff denies each and every remaining allegation in said defendant's counter-claim not hereinbefore specifically admitted. For further answer plaintiff refers to and incorporates herein each and every allegation contained in its Bill of Complaint.

Wherefore, plaintiff prays that the counter-claim of coun-

ter-claimant, Citizens Gas Company of Indianapolis, be dismissed as to plaintiff and that plaintiff have judgment against said counter-claimant for its costs.

Newton D. Baker
Raymond T. Jackson
William L. Taylor
Solicitors for Plaintiff.

217 And afterwards to wit at the November Term of said Court, on the 16th day of January, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Filed Jan.
1937

Comes now the defendant Indianapolis Gas Company, by its solicitors, and files answer to counter-claim of the defendant Citizens Gas Company of Indianapolis, which answer is as follows:

218 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

**DEFENDANT THE INDIANAPOLIS GAS COMPANY'S
ANSWER TO THE COUNTER-CLAIM OF DEFENDANT
CITIZENS GAS COMPANY OF INDIANAPOLIS.**

Comes now The Indianapolis Gas Company, counter-defendant herein, and makes answer to the counter-claim of defendant Citizens Gas Company of Indianapolis, as follows:

Said counter-defendant admits that The Chase National Bank of the City of New York is a corporation and is a citizen and resident of the State of New York, and that it is a successor Trustee under a deed of trust executed on the first day of October, 1902, by the defendant The Indianapolis Gas Company to secure the payment of the principal and interest of certain bonds which are now outstanding in the hands of the public in the total principal amount of \$6,881,000. It does not know under the laws of what jurisdiction the Chase National Bank of the City of New York is organized as a corporation and demands proof concerning the same.

219 Answering the rhetorical paragraph which commences with the 24th line of page 17 of said defendant's answer and counter-claim, this counter-defendant admits that the defendant Citizens Gas Company of Indianapolis was duly or-

ganized as therein alleged, that it adopted articles and by-laws and accepted a certain franchise and contract, copies of which instruments are filed with the plaintiff's bill of complaint as Exhibit "C" thereof, all as alleged in said counterclaim; but plaintiff does not know that its purposes and obligations were fixed and controlled entirely by said instruments, nor admit the same, but is advised that the averment thereof is a conclusion of law, and asks to be excused from answering the same.

Answering the rhetorical paragraph commencing at line 7 of page 18 of said counter-claim this counter-defendant admits that by virtue of said instruments the persons therein designated became the trustees of a Public Charitable Trust for the benefit of present and prospective gas consumers of the City of Indianapolis, and that subject to the provisions thereof all the rights, property and assets then or thereafter acquired by the counter-claimant were so held as such Trustee, subject to the payment of its legal obligations, and for the purposes and upon the terms and conditions set forth in said instruments. It does not know whether or not they were held "for the purposes and upon the conditions therein set forth and no other." And counter-claimant says it does not know as a matter of fact whether the Trustee of such Public Charitable Trust was the Citizens Gas Company itself, or its Board of Directors, or the Board of Trustees which held and voted its outstanding stock, but counter-defendant is advised

that this is a question for the decision of the court from
220 a consideration of said instruments and the attending fact which involves questions of law, and asks that if it be material to the determination of any issue presented in this cause the court will determine the same and advise this counter-defendant.

This counter-defendant admits that the said instruments so identified as Exhibit C with the plaintiff's complaint and with the counter-claim contains provisions substantially as set forth in the aforesaid rhetorical paragraph, which expressly make any title conveyed to the City of Indianapolis, as Trustee or otherwise, subject to all legal obligations of the Citizens Gas Company.

Answering the rhetorical paragraph commencing in line 29; page 18 of said counter-claim, this counter-defendant admits that from or immediately after the date of its organization the defendant Citizens Gas Company began to operate under the terms of the aforesaid franchise and contract, and

further admits that thereafter, on or about August 27, 1921, it filed a declaration of surrender of said franchise and accepted in lieu thereof an indetermined permit, under which it continued to operate and hold the property. But as to the remaining allegations of said rhetorical paragraph this counter-defendant has no actual knowledge concerning the Citizens Gas Company ceasing to operate or hold said property, nor the exact date thereof, and is informed that the legal effect of such indeterminate permit is a matter of law for the determination of this court and asks that it be not required to answer the same.

221 This counter-claimant admits the allegations concerning the written lease, marked Exhibit B, contained in the rhetorical paragraph commencing at line 13 on page 19.

Answering the rhetorical paragraph which commences at line 19, page 19 of the Citizens Gas Company's counter-claim this counter-defendant is not informed as to what actual knowledge this counter-defendant or any of the holders of bonds secured by the mortgage on its property had concerning the term and provisions of said franchise and contract, articles of incorporation and by-laws of the defendant Citizens Gas Company or of their legal effect, and does not even know who were then holders of the bonds secured by the mortgage of The Indianapolis Gas Company referred to, but is informed that in the succeeding 22 years a large number if not all of such bondholders have died; and it is advised that whether or not this counter-defendant company and the holders of said bonds were bound in law to know such terms and conditions and legal effect is a question of law which counter-defendant asks to be excused from answering.

Answering the rhetorical paragraph commencing at line 4 of page 20 of said counter-claim, this counter-defendant admits that at sometime in 1935 officers of the defendant Citizens Gas Company of Indianapolis in its name and purporting to act on its behalf executed certain instruments which purported to convey and transfer all of its property to the City of Indianapolis, and that on or about September 9, 1935 the said City, through its Trustees and Directors for Utilities received and accepted possession of such property. But this counter-defendant is not fully informed and does not know how far all of the conditions fixed in said franchise and contract, articles of incorporation and by-laws aforesaid
222 had been or have been performed and whether such performance and conveyance were in the manner and form

pursuant to its duty thereunder, and ask strict proof thereof, if deemed material.

This counter-defendant admits all the allegations contained in the rhetorical paragraph of said counter-claim commencing at line 17 on page 20 thereof.

This counter-defendant denies each and every allegation contained in the rhetorical paragraph commencing at line 3, page 21 of said counter-claim and avers that the said 99 year lease is a valid and legal obligation of counter-claimant Citizens Gas Company from which it has not been entirely and completely released.

Counter-defendant is informed and therefore alleges that the averments in the rhetorical paragraph commencing at line 10 on page 21 of the counter-claim, marked "(1)" states matters of law and not facts, and asks to be excused from answering the same; and it denies any and all facts therein stated.

This counter-defendant is likewise informed and therefore alleges that the rhetorical paragraph commencing at line 17 on page 21 of the counter-claim, marked "(2)", states matters of law and not fact and therefore asks to be excused from answering the same; and it denies each and all averments of fact, if any therein contained.

This counter-defendant answering the rhetorical paragraph commencing at line 24 on page 21 of the counter-claim marked "(3)", admits that said counter-claimant conveyed and transferred all its property to the City of Indianapolis, subject to all legal obligations, including the legal obligation of said counter-claimant under said lease; but this counter-defendant denies that so far as it is concerned said counter-claimant has carried out or performed the purposes of its organization or the duties and obligations to which it was and still is subject.

This counter-defendant answering the rhetorical paragraph commencing at line 6 on page 22 of said counter-claim marked "(4)", denies that it is estopped to insist that said counter-claimant has not been entirely and completely released and discharged from any and all obligations under said lease or to insist that the said lease is a valid obligation of the counter-claimant at this time.

This counter-defendant, answering the rhetorical paragraph which commences at line 12 on page 22 of said counter-claim, marked "(5)", admits that heretofore in the year 1935 said counter-claimant conveyed all its property, including its in-

terest in and to the said 99 year lease to the City of Indianapolis, subject to all legal obligations of said counter-claimant, including its legal obligation under the said 99-year lease. Counter-defendant denies that said counter-claimant fully and completely complied with all the terms and provisions of said 99-year lease up to the date of such conveyance, and denies that counter-claimant is entirely and completely released from any obligation thereunder.

Answering the rhetorical paragraph which commences at line 28 of page 22 of said counter-claim, this counter-defendant denies that the counter-claimant is entitled to a judgment determining that the 99-year lease is not a valid and binding obligation against it or that it has been released and discharged from its obligation thereunder by its conveyance to the City of Indianapolis or otherwise.

This counter-defendant admits the allegations of the rhetorical paragraph commencing at line 6 on page 23 of the counter-claim to the effect that certain defendants contend that the City of Indianapolis had the legal right to accept the transfer of certain gas properties subject to outstanding legal obligations of counter-claimant except its legal obligation under said 99-year lease; but that in fact the City of Indianapolis has assumed each and all of the obligations of said lease, and holds all of the property so conveyed to and accepted by it subject to the charge and obligation of said 99-year lease.

Counter-defendant, answering the averments of the rhetorical paragraph which commences at line 25 on page 23 of said counter-claim, admits that the Citizens Gas Company, its Directors, Officers and Trustees, had complete power and authority to execute and to enter into the said 99-year lease as aforesaid and admits that said lease was valid and binding upon said counter-claimant and its property from the date of the execution thereof.

Counter-defendant denies that the Citizens Gas Company, this counter-claimant, has fully performed its duties as Trustee of said Public Charitable Trust and denies that it is under no further obligation to this counter-defendant; and further denies that said counter-claimant is without interest in the controversy between the plaintiff herein and The Indianapolis Gas Company and other defendants. This counter-defendant, The Indianapolis Gas Company, denies each and every remaining averment in the said counter-claim of said Citizens Gas Company not hereinabove specifically admitted.

Wherefore this counter-defendant, The Indianapolis Gas Company, prays that the counter-claim of defendant Citizens Gas Company of Indianapolis be dismissed as to this counter-defendant and that it have judgment against said counter-claimant for its costs.

Louis B. Ewbank,

Wm. R. Higgins,

Solicitors for Defendant, The Indianapolis Gas Company.

226 And afterwards towit at the November Term of said Court, on the 26th day of January, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Come now the defendants City of Indianapolis, et al and file request for separate determination of question of jurisdiction of this Court over the subject matter of this action, which request is as follows:

227 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

REQUEST OF DEFENDANTS THE CITY OF INDIANAPOLIS AND THE TRUSTEES AND DIRECTORS OF THE DEPARTMENT OF UTILITIES OF THE CITY OF INDIANAPOLIS FOR SEPARATE DETERMINATION OF QUESTION OF JURISDICTION OF THIS COURT OVER THE SUBJECT MATTER OF THIS ACTION.

The defendants City of Indianapolis and the Trustees and Directors of the Department of Utilities of the City of Indianapolis request the Court to determine the question of the jurisdiction of this Court over the subject matter of this action as raised by subdivision 19 of the answer of these defendants as amended before a hearing of this cause on its merits.

Respectfully submitted,

Floyd J. Mattice,

Corporation Counsel.

Thompson & Rabb,

Solicitors for said defendants.

228 And afterwards towit at the April Term of said Court, on the 26th day of July, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Entered Jul
26, 1937.

This day this cause came on to be heard on the ground separately pleaded in the 19th paragraph as amended of the Separate and Several Answer and Counter-claim of the defendants The City of Indianapolis, a municipal corporation, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as Members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Fred W. Jungclauss, Roy Sahm, David J. Angus, Isaac E. Woodard and Russell J. Ryan, as Members of the Board of Directors of Utilities of the City of Indianapolis, that the Court has no jurisdiction of this action, and was argued by counsel, and the Court, being fully advised in the premises, finds:

(a) That defendant The Indianapolis Gas Company is an indispensable party to the relief sought by plaintiff in this cause.

(b) That, in the controversies presented by the Bill of Complaint herein, there is no collision between the interests of the plaintiff and the interests of The Indianapolis Gas Company.

(c) That the Indianapolis Gas Company should therefore be re-aligned with the plaintiff as a party plaintiff, for the purpose of testing the jurisdiction of this Court.

229 (d) That there is not complete diversity of citizenship between the plaintiff's as so re-aligned and the defendants and that this Court therefore has no jurisdiction of this cause.

It Is Therefore Ordered, Adjudged, and Decreed that the Bill of Complaint herein and the Counter-claim of the defendants herein above named be dismissed for want of jurisdiction, provided, however, that the plaintiff has leave to serve an amended Bill of Complaint in this cause within 30 days after the entry of this order to each of which findings and the order of the Court the plaintiff excepts, and its exceptions are hereby taken.

Entered Aug.
18, 1937.

230 And afterwards to wit at the April Term of said Court, on the 18th day of August, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Come now the parties and plaintiffs asks leave to file an Amendment and Supplement to plaintiff's Bill of Complaint, which Amendment and Supplement is in the words and figures, following, to wit:

(H. I.)

It Is Ordered that the plaintiff be given leave to file said Amendment and Supplement to the plaintiff's Bill of Complaint, which is now done.

Come also Citizens Gas Company of Indianapolis, a corporation, by (Smith, Remster, Hornbook & Smith), now Davis, Pantzer, Baltzell, and Sparks, Solicitors, The Indianapolis Gas Company, a corporation, by Louis B. Ewbank and William R. Higgins, Solicitors, The City of Indianapolis, a municipal corporation, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dittmer, Broadhurst Elsey, (Fred W. Jungclaus) Joseph McDuifec, Roy Sahn, Donald J. Angus, Isaac E. Woodard and (Russell Ryan) Leroy J. Keach, as members of the Board of Directors for Utilities of the City of Indianapolis, by Floyd J. Matice, Corporation Counsel, Michael B. Reddington, Assistant City Attorney, and William H. Thompson and Albert L. Rabb, Solicitors, and waive summons and service thereof of notice of the filing of such Amendment and Supplement.

231 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—1844) * *

AMENDMENT AND SUPPLEMENT TO PLAINTIFF'S
BILL OF COMPLAINT.

William L. Taylor,
State Life Building,
Indianapolis, Indiana.
Newton D. Baker,
Raymond T. Jackson,
Union Trust Building,
Cleveland, Ohio,
Solicitors for Plaintiff.

August 18, 1937.

The plaintiff, The Chase National Bank of the City of New York, Trustee, by leave of court first obtained, hereby amends and supplements its bill of complaint filed in this cause in the following particulars:

(1) By inserting in paragraph 3, following the fifteenth line of page 3 of the bill of complaint, the following words:

"Plaintiff also seeks to preserve and protect said lease and the property leased thereunder, to prevent loss from waste and damage to the same, to preserve and protect its rights and the rights of the holders of bonds for which it is trustee, to recover the interest on said bonds as it becomes due from the lessees in accordance with the provisions of said lease, and to recover the unpaid interest, together with interest thereon, which is now due or may hereafter become due from the several defendants."

(2) By inserting in Paragraph 11 after the word "Indianapolis" in the second line on page 12 of the bill of complaint the following words:

"During said period said lessee from time to time duly paid installments of interest on the outstanding bonds of The Indianapolis Gas Company by making payment directly to the Trustee of said bonds or to the bondholders themselves."

(3) By striking out all of paragraph 24, commencing at the thirty-fifth line of page 19 and ending at the twenty-second line of page 20 of the bill of complaint, and inserting in place thereof the following words:

"24. On or about March 2, 1936 the City of Indianapolis and The Indianapolis Gas Company entered into a written agreement which provides, among other things, that the City shall use and operate the gas properties of The Indianapolis Gas Company until such time as an agreement of settlement is reached between the City and The Indianapolis Gas Company or, in the event the said parties are unable to reach an agreement, until such time as the differences between them shall have been finally adjudicated in a litigated case. Said agreement further provides that, pending such agreement or adjudication, in lieu of paying the interest upon the outstanding bonds of The Indianapolis Gas Company and the other obligations under the 99 year lease as provided therein, the

City will deposit with The Indiana National Bank on the dates when the same shall be payable under the provisions of the lease a sum equal to such interest plus a sum equal to the accrued dividends upon the stock of The Indianapolis Gas Company, these sums to be held by said bank and paid to the parties to said agreement as follows:

(a) in the event the City and The Indianapolis Gas Company shall agree upon a settlement, then in accordance with the settlement agreement;

233 (b) in the event of a final adjudication in favor of the validity of the 99 year lease, then the entire fund shall go to The Indianapolis Gas Company; and

(c) in the event of a final adjudication against the validity of the 99 year lease, then that part of the fund which represents, as the parties may agree or as the Court may determine, the reasonable value of the use of the property shall be paid to The Indianapolis Gas Company and the balance shall be paid to the City.

No provision was made in said agreement for performance by either party, during its continuation, of any of the obligations of the mortgage of which plaintiff is trustee. No provision was made in said agreement for any payment, subsequent to March 30, 1936, to the plaintiff or to the bondholders of The Indianapolis Gas Company on account of interest upon the outstanding bonds, or on account of interest upon any defaulted payments upon such outstanding bonds, either during the life of said agreement or upon the expiration thereof. Plaintiff further alleges that said agreement of March 2, 1936, has never been modified or supplemented in any respect; that no settlement agreement as provided therein has ever been entered into between The Indianapolis Gas Company and the City of Indianapolis; that neither of said parties has even taken any steps to obtain a judicial determination of the validity of the lease of September 30, 1913; that The Indianapolis Gas Company has no assets or property of any substantial value other than the property covered by said mortgage and lease, and since the Citizens Gas Company has heretofore conveyed all of its property to the City of Indianapolis, the agreement of March 2, 1936 is tantamount to an agreement among the several defendants that no interest shall be paid upon the outstanding bonds by any of them unless and until the City and The Indianapolis Gas Company

shall so agree; that as a direct result of said agreement of March 2, 1936, default was made in the payment of interest due upon the outstanding bonds of The Indianapolis Gas Company on October 1, 1936, and default was made in the payment of interest due on April 1, 1937; that both the City of Indianapolis and The Indianapolis Gas Company have failed and refused to pay any sum whatever on account of such defaulted interest which now amounts to more than \$350,000.00; that by reason of said defaults and the acts and things done by the several defendants as hereinbefore alleged, the market value of the outstanding bonds of The Indianapolis Gas Company has steadily declined, and the value of said bonds and the value of the mortgaged property is imminently threatened with further depreciation and irreparable injury. Plaintiff further alleges that the mortgaged property has become so merged with the property formerly owned and held by the Citizens Gas Company that it is no longer practical or economical to separate the properties or to operate either of them as independent or competing properties; that the aforesaid agreement of March 2, 1936 was entered into by The Indianapolis Gas Company and the City of Indianapolis with full knowledge of these facts and without knowledge, consent or approval and in violation of the rights of the plaintiff herein and of the bondholders for whom plaintiff is Trustee; that the purpose and intent of said agreement was to bring about a default in the payment of interest, to depreciate the value of the outstanding bonds, to place the income derived from the operation of the mortgaged property beyond the reach of the bondholders, and by these means to coerce the plaintiff and the bondholders for whom plaintiff is Trustee to surrender the rights secured to them under the mortgage and under the lease of September 30, 1913, and thereby make possible a settlement agreement acceptable to the stockholders of The Indianapolis Gas Company and to the City of Indianapolis. A true copy of said agreement of March 2, 1936, is hereto attached, made a part hereof and marked Exhibit II."

(4) By striking out the period at the end of the 6th paragraph of the prayer at page 21 of the bill of complaint and inserting, as a part of said paragraph, the following words: "and that this Court by final judgment declare that the agreement of March 2, 1936 between the City of Indianapolis

and The Indianapolis Gas Company is not binding upon the plaintiff, does not in any way alter or impair its rights and the rights of the bondholders whom it represents under and by virtue of said lease and the mortgage deed of trust and does not in any way affect the liabilities and obligations of the City and The Indianapolis Gas Company to the plaintiff and to the bondholders."

(5) By inserting between paragraphs 8 and 9 of the prayer on page 22 of the bill of complaint, the following:

§12 That this Court in its final decree:

(a) find that the fund theretofore deposited with The Indiana National Bank of Indianapolis under the agreement of March 2, 1936, or such portion thereof as represents the unpaid interest payable under the mortgage deed of trust, together with interest thereon at the rate of six per cent per annum from the several dates upon which such interest payments accrued, is the property of and in equity belongs to the holders of the bonds of The Indianapolis Gas Company, and

(b) order that the City of Indianapolis and The Indianapolis Gas Company pay out of such fund such expenses as this Court may allow to the plaintiff herein and join in delivering the balance of said fund or the aforesaid portion thereof to the plaintiff herein to be held and paid over to the holders of said bonds in accordance with their respective pro rata interest therein.

William L. Taylor,
Newton D. Baker,
Raymond T. Jackson,
Solicitors for Plaintiff.

August 18th, 1937.

State of New York,
County of New York, ss.

S. Armstrong, being duly sworn, deposes and says: That he is a vice president of The Chase National Bank of the City of New York, the plaintiff named in the above entitled action; that he has read the foregoing amendment and supplement to plaintiff's bill of complaint and knows the contents thereof, and that the allegations therein contained are true as he verily believes.

S. Armstrong.

Subscribed and sworn to before me this 16th day of August, 1937.

C. E. Van Name,

(Notarial Seal)

Notary Public.

C. E. Van Name
Notary Public, Richmond County
Certificates Filed in
New York County Clerk's No. 15
Register's No. 9-V-10
Queens County Clerk's No. 1283
Register's No. 5249
Commission expires March 30, 1939

235

EXHIBIT H.

Contract of March 2, 1936 Between City of Indianapolis and
the Indianapolis Gas Company.

236-237 * * * * *

“(Here is copied as ‘Exhibit H’ the contract of March 2, 1936, between the Department of Utilities of the City of Indianapolis and The Indianapolis Gas Company, which contract is in the form of a letter dated March 2, 1936, from the Department of Utilities of the City of Indianapolis to The Indianapolis Gas Company. In all respects this is the identical contract printed as ‘Exhibit E’ to the separate and several answer and counter-claim of defendants, The City of Indianapolis and the directors and trustees of its Utility District.)”

238

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—1844) * *

WAIVER OF NOTICE AND SERVICE THEREOF OF
THE FILING BY THE PLAINTIFF, THE CHASE NA-
TIONAL BANK OF THE CITY OF NEW YORK, TRUS-
TEE, OF AMENDMENT AND SUPPLEMENT TO BILL
OF COMPLAINT.

The undersigned attorneys for the defendants named, hereby waive issuance and service of summons and formal notice of the filing of the Amendment and Supplement to the Bill of

Waiver.

Complaint by The Chase National Bank of the City of New York, Trustee, Plaintiff in the above entitled cause.

Citizens Gas Company of Indianapolis,
a corporation,

By Davis, Pantzer, Baltzell & Sparks

By P. Y. Davis,

Solicitors.

The Indianapolis Gas Company, a corporation,

By Louis B. Fwbank,

Wm. R. Higgins,

Solicitors.

The City of Indianapolis, a municipal corporation,

William J. Mooney, Sr.,

A. Dallas Hitz,

Alfred M. Glossbrenner,

Edward W. Harris and

Charles S. Raub,

as members of the Board of Trustees for Utilities of the City of Indianapolis.

Henry L. Dithmer,

Broadhurst Elsey,

(Fred W. Jungclauss) Joseph McDuffee,

Roy Sahn,

Donald J. Angus,

Isaac E. Woodard and

(Russell J. Ryan) Leroy J. Keach,

as members of the Board of Directors for Utilities of the City of Indianapolis.

By Floyd J. Mattice, by ALR.

Corporation Counsel.

Thompson & Rabb,

By Albert L. Rabb,

Solicitors.

And defendants ask and are given to and including September 10, 1937, within which to answer said amendment and supplement.

240 And afterwards to wit at the April Term of said Court on the 10th day of September, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Comes now the defendant Indianapolis Gas Company, by its solicitors, and files answer, which is as follows:

241 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

SEPARATE ANSWER OF DEFENDANT THE INDIANAPOLIS GAS COMPANY.

The Indianapolis Gas Company, a defendant in the above entitled cause, for its separate answer to the plaintiff's supplemented and amended bill of complaint says:

1. This defendant admits the averments contained in subdivision 1 of plaintiff's bill of complaint.
- 242 2. This defendant admits the averments contained in subdivision 2 of plaintiff's bill of complaint.
3. This defendant admits the averments contained in subdivision 3 of plaintiff's bill of complaint.
4. This defendant admits the averments contained in subdivision 4 of plaintiff's bill of complaint.
5. This defendant admits the averments contained in subdivision 5 of plaintiff's bill of complaint.
6. This defendant admits the averments contained in subdivision 6 of plaintiff's bill of complaint.
7. This defendant admits the averments contained in subdivision 7 of plaintiff's bill of complaint.
8. This defendant admits the averments contained in subdivision 8 of plaintiff's bill of complaint.
9. This defendant admits the averments contained in subdivision 9 of plaintiff's bill of complaint.
10. Answering the tenth subdivision of the bill, this defendant admits that at the time of the execution of said ninety-nine year lease its first mortgage bonds in the principal amount of \$4,833,000.00 had been and were issued and outstanding and that subsequent to the execution of said lease, and during the operation of its property thereunder by defendant, the Citizens Gas Company of Indianapolis, addi-

tional bonds in the principal amount of \$2,048,000.00 ~~were~~ authenticated by the Trustee and delivered by this defendant to defendant, Citizens Gas Company of Indianapolis, to reimburse said latter company for capital expenditures made upon this defendant's property. This defendant denies any knowledge or information sufficient to make answer to the allegation in this subdivision of the bill, that its bonds sold subsequent to the execution of said lease were sold in reliance upon the validity and effect of the said lease.

11. This defendant admits the averments contained in subdivision 11 of plaintiff's bill of complaint.

12. This defendant admits the averments contained in subdivision 12 of plaintiff's bill of complaint.

13. This defendant admits the averments contained in subdivision 13 of plaintiff's bill of complaint.

14. This defendant admits the averments contained in subdivision 14 of plaintiff's bill of complaint.

15. This defendant admits the averments contained in subdivision 15 of plaintiff's bill of complaint.

16. This defendant admits the averments contained in subdivision 16 of plaintiff's bill of complaint.

17. This defendant admits the averments contained in subdivision 17 of plaintiff's bill of complaint.

18. This defendant admits the averments contained in subdivision 18 of plaintiff's bill of complaint.

19. This defendant admits the averments contained in subdivision 19 of plaintiff's bill of complaint.

20. Answering subdivision twenty and twenty-one of the bill, this defendant denies that it has ever contended or admitted that the said ninety-nine year lease was not and is not a valid and binding obligation upon itself, and defendant, The Citizens Gas Company of Indianapolis; or the City of Indianapolis as assignee and successor in trust to said last named company.

21. Answering subdivision twenty-two of the bill, this defendant says that it is not sufficiently informed concerning what is alleged in said subdivision to make answer thereto, and asks that plaintiff make proof thereof.

22. Answering the twenty-third subdivision of the bill, this defendant admits the defendant, City of Indianapolis, through its department of utilities, has denied any liability and obligation as assignee and successor to the Citizens Gas Company of Indianapolis, under the terms and provisions of

said ninety-nine year lease, and did so notify this defendant by letter. This defendant further admits that it undertook with defendant, City of Indianapolis through its Department of Utilities, negotiations looking to a settlement of the controversy concerning the use of its said property covered by said lease, but it denies that it at any time abandoned or waived or negotiated to abandon or waive any rights which at law or in equity belong to this plaintiff or the trust which it represents, or to affect them in any way unless with the full consent of plaintiff and the bondholders for whom it is trustee.

23. Answering the twenty-fourth subdivision of the bill, this defendant admits the averments therein set out that this defendant with the City of Indianapolis entered into a written agreement on March 2, 1936, a true copy of which said agreement is set out in said bill as Exhibit H; but it denies that in so doing it gave any consent to the withholding of payment of any interest on any bonds, or deprived or agreed to the deprivation of this plaintiff, or the holders of bonds for whom it is suing, of any valuable property right or security underlying said bonds. This defendant further says that said

agreement, providing that no waiver of any rights by any party thereto should result from such operation of the defendant's property, was entered into by it to prevent a failure and breakdown of public service in the furnishing and distribution of gas to the citizens and gas users of the City of Indianapolis, which in the then belief of this defendant appeared to be otherwise imminent and unavoidable. By the terms of said agreement all rights under and pursuant to the terms and provisions of said ninety-nine year lease, which properly belong to this plaintiff as Trustee under said Mortgage Deed of Trust, so far as could be done if said purpose to avert a break-down of said public service be accomplished, this defendant believes and therefor avers were expressly reserved and protected.

This defendant admits that said agreement of March 2, 1936 was entered into without the knowledge, consent and approval of the plaintiff, but it denies that the purpose and intent of said agreement was to bring about a default in the payment of interest on or to depreciate the value of the outstanding bonds or to coerce the plaintiff and the bondholders for whom it is Trustee to surrender any rights secured to them under the mortgage and under the lease of September 30, 1913.

24. Answering the twenty-fifth subdivision of the bill, this

defendant denies that it is now negotiating with defendant, City of Indianapolis, for the use of its property by said City under any agreement, lease or arrangement which deprives or would deprive this plaintiff or the holders of this defendant's outstanding bonds of any rights or privileges which either at law or in equity properly inure to them by the 246 terms and provisions of said Mortgage Deed of Trust.

This defendant has at all times and does now, admit the obligation and liability of its entire property, both real and personal, to the performance of the terms and provisions of the said Mortgage Deed of Trust, and this obligation and liability it has never at any time denied or sought to evade by any agreement with any co-defendant in this cause, nor does it do so now.

25. This defendant denies each and every allegation in the bill not hereinabove admitted, controverted or specifically denied.

Wherefore This defendant denies that the plaintiff is entitled to the relief prayed for in the bill of complaint against this defendant, and prays that as to it the bill of complaint as supplemented and amended be dismissed with costs.

The Indianapolis Gas Company,

By Louis B. Ewbank,

Wm. R. Higgins,

Its Solicitors.

247 (Entry for September 10, 1937, continued.)

Come now the defendants City of Indianapolis, et al., by their solicitors, and file answer to amendment and supplement to plaintiff's bill of complaint, which answer is as follows:

248 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

ANSWER OF CITY OF INDIANAPOLIS AND THE DIRECTORS AND TRUSTEES OF ITS UTILITY DISTRICT TO AMENDMENT AND SUPPLEMENT TO PLAINTIFF'S BILL OF COMPLAINT.

The City of Indianapolis, a municipal corporation; William J. Mooney, A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris, and Charles S. Rauh, as members of the Board

of Trustees for Utilities of the City of Indianapolis; Henry L. Dithmer, Brodehurst Elsey, Roy Sahn, Donald J. Angus, Isaac E. Woodard, Joseph H. McDuffee and Leroy J. Keach (the two latter being the successors in office of Fred W. Jungclauss and Russell J. Ryan) as members of the Board of Directors for Utilities of the City of Indianapolis, for answer to the Amendment and Supplement to Plaintiff's Bill of Complaint herein, says:

1. They deny that plaintiff seeks to preserve and protect the lease and the property lease thereunder or to prevent loss from waste and damage to the same; and aver that moneys to become due under the said lease of mortgaged property are not subject to the lien of such mortgage until reduced to possession by the mortgage, and that plaintiff has no interest in the payments made under such lease.

249 2. They deny that the lessee paid instalments of interest on the outstanding bonds of The Indianapolis Gas Company directly to the Trustee of said bonds.

3. They admit that on or about the 2nd day of March, 1936, the City of Indianapolis and the Indianapolis Gas Company entered into a certain written agreement, a correct copy of which agreement is set out as Exhibit E to the answer filed by these defendants to plaintiff's original bill of complaint, and a copy of which is also set out as Exhibit H to said complaint by way of said Amendment and Supplement. They deny the accuracy of plaintiff's paraphrase of said agreement; they deny that said agreement is tantamount to an agreement among the several defendants that no interest shall be paid upon the outstanding bonds by any of them unless and until the City and The Indianapolis Gas Company shall so agree; they deny that as a direct result of said agreement a default was made in the payment of interest due upon the outstanding bonds of The Indianapolis Gas Company on October 1, 1936, or on April 1, 1937; they deny that the market value of the outstanding bonds of The Indianapolis Gas Company has steadily declined due to the acts and things done by the several defendants as alleged in said bill of complaint, as amended and supplemented; and they deny that the value of said bonds and the value of the mortgaged property is imminently threatened with further depreciation and irreparable injury. They deny that the City of Indianapolis could not duplicate the properties owned by The Indianapolis Gas Company, and then operate the same separate from such

properties. They deny the said agreement was entered into in violation of the rights of plaintiff and of the bondholders for whom plaintiff is Trustee. They deny that the purpose or intent of said agreement was to bring about a default

in the payment of interest or to depreciate the value of
250 the outstanding bonds or to place the income derived

from the operation of the mortgaged property beyond the reach of the bondholders or to coerce plaintiff and the bondholders for whom plaintiff is Trustee to surrender the rights secured to them under the mortgage and under the lease of September 30, 1913, or thereby to make possible a settlement agreement acceptable to the stockholders of The Indianapolis Gas Company and to the City of Indianapolis. These answering defendants aver that plaintiff and the bondholders whom it represents had full knowledge prior to the commencement of this action of the existence of said agreement, and contents thereof, and the payments made thereunder; that plaintiff and the bondholders whom it represents have by their conduct and acquiescence in said agreement and the operations thereunder induced the City of Indianapolis to continue to make such payments and to continue to operate the properties of The Indianapolis Gas Company and are now estopped to assert the invalidity of such agreement or of the acts of the parties thereunder. These answering defendants further aver that the lease referred to by plaintiff as a 99 year lease has no validity or effect as against these defendants for the reasons specifically stated in subdivision 27 of the answer of these defendants.

4. They deny that plaintiff is entitled to a final judgment declaring that said agreement of March 2, 1936, is not binding upon plaintiff, does not in any way alter or impair its rights or the rights of the bondholders whom it represents, and does not in any way affect the liabilities and obligations of the City and The Indianapolis Gas Company to plaintiff or the bondholders.

5. They deny that plaintiff is entitled to a final decree that the fund deposited with The Indiana National Bank of Indianapolis under said agreement of March 2, 1936, or
251 such portion thereof as represents unpaid interest, together with interest thereon at the rate of six per cent per annum from the several dates upon which such interest payments accrued, is the property of or in equity belongs to holders of the bonds of The Indianapolis Gas Company; and

they deny that plaintiff is entitled to an order that the City of Indianapolis and The Indianapolis Gas Company pay out of such fund such expenses as this Court may allow to plaintiff here or any expenses or that the balance of such fund or any part of it be paid to plaintiff for any purpose.

6. They aver that The Indianapolis Gas Company, one of the defendants herein, is an indispensable party to this suit; that its interest is that the said lease between The Indianapolis Gas Company and Citizens Gas Company of Indianapolis be declared valid and enforceable against the City of Indianapolis; that therefore The Indianapolis Gas Company should be aligned as a party plaintiff, and this suit dismissed for want of the requisite diversity of citizenship.

Floyd J. Mattice,

*Corporation Counsel, City of
Indianapolis;*

Michael B. Reddington,

*City Attorney, City of In-
dianapolis;*

William H. Thompson,

Albert L. Rabb,

*Solicitors for said Answering
Defendant.*

252 And afterwards towit at the April Term of said Court on the 15th day of September, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Entered Sept
15, 1937

It appearing to the Court that Fred W. Junglaus and Russell J. Ryan are no longer members of the Board of Directors for Utilities of the City of Indianapolis and that Joseph H. McDuffee and Leroy J. Keach have succeeded said Fred W. Junglaus and Russell J. Ryan as such members, said Joseph H. McDuffee and Leroy J. Keach, as members of the Board of Directors for Utilities of the City of Indianapolis are made parties defendant in this suit and the suit shall proceed.

Filed Sept.
21, 1937.

253 And afterwards towit at the April Term of said Court on the 21st day of September, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Comes now the defendant Citizens Gas Company, by its Solicitors, and files answer to amendment and supplement to plaintiff's bill of complaint, which answer is as follows:

254 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

SEPARATE ANSWER OF CITIZENS GAS COMPANY
OF INDIANAPOLIS TO AMENDMENT AND SUPPLE-
MENT TO PLAINTIFF'S BILL OF COMPLAINT.

Citizens Gas Company of Indianapolis, a defendant in the above entitled cause, for separate answer to the amendment and supplement to the plaintiff's bill of complaint, says:

255 1. This defendant has no knowledge concerning the purpose or motive of the plaintiff set forth in the averments contained in Subdivision 1 of said amendment and supplement, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

2. This defendant admits the averments contained in Subdivision 2 of said amendment and supplement.

3. This defendant has no knowledge of the averments contained in Subdivision 3 of the said amendment and supplement, and neither admits nor denies said averments, but requests that plaintiff be required to make strict proof thereof.

Wherefore this defendant, having fully answered the said amendment and supplement to plaintiff's bill of complaint, prays that it may go hence without day.

Davis, Pantzer, Baltzell & Sparks,
Solicitors for said Defendant.

256 And afterwards towit at the November Term of said Court, on the 15th day of November, 1937, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Entered Nov
15, 1937

This day this cause came on to be heard on the ground separately preaded in the 19th paragraph as amended of the Separate and Several Answer and Counter-claim of the defendants, The City of Indianapolis, a municipal corporation, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris and Charles S. Rauh, as Members, of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Joseph H. McDuffee, Roy Sahn, David J. Angus, Isaac E. Woodard and Leroy J. Keach, as Members of the Board of Directors for Utilities of the City of Indianapolis, that the Court has no jurisdiction of this action, (which ground is also pleaded in the 6th paragraph of the Answer of said defendants just enumerated to the Amendment and Supplement to Plaintiff's Bill of Complaint), and was argued by counsel, and the Court, being fully advised in the premises, finds:

(a) That defendant The Indianapolis Gas Company is an indispensable party to the relief sought by plaintiff in this cause.

(b) That, in the controversies presented by the Bill of Complaint herein, there is no collision between the interests of the plaintiff and the interests of The Indianapolis Gas Company.

(c) That The Indianapolis Gas Company should therefore be realigned with the plaintiff as a party plaintiff, for 257 the purpose of testing the jurisdiction of this Court.

(d) That there is not complete diversity of citizenship between the plaintiffs as so re-aligned and the defendants and that this Court therefore has no jurisdiction of this cause.

It is therefore ordered, adjudged, and decreed that the Bill of Complaint herein as Amended and Supplemented and the Counter-claim of the defendants herein-above named be dismissed for want of jurisdiction, to each of which findings and the order of the Court the plaintiff excepts, and its exceptions are hereby taken.

ed Nov. 27, 1937 258 And afterwards towit at the November Term of said Court on the 27th day of November, 1937 before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Comes now the plaintiff by its solicitors and files petition for appeal, which petition is as follows:

259 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

PETITION FOR APPEAL

The above named The Chase National Bank of the City of New York, Trustee, the plaintiff in the above entitled cause, considering itself aggrieved by the order and final decree made and entered on the 15th day of November, 1937, in the above entitled cause, does hereby appeal from said order and final decree to the United States Circuit Court of Appeals 260 for the Seventh Circuit, for the reasons specified in the

Assignment of Errors, which is filed herewith, and the plaintiff prays that this appeal may be allowed, that a citation may be issued as provided by law and that a transcript of the record, proceedings, papers and exhibits upon which said order and final decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit under the rules of said Court in such cases made and provided, and the plaintiff further prays that the amount of security which the plaintiff shall give and furnish upon said appeal may be fixed by the order of this Court allowing the appeal.

(William L. Taylor) William L. Taylor,
(Newton D. Baker) Newton D. Baker,
(Howard F. Burns) Howard F. Burns,
Solicitors for Plaintiff.

261 (Entry for November 27, 1937, continued.)

And the plaintiff also files assignment of errors, which are as follows:

262 IN THE DISTRICT COURT OF THE UNITED STATES.
 * * (Caption—1844) * *

Filed Nov
 1937

**ASSIGNMENT OF ERRORS ON BEHALF OF
 PLAINTIFF.**

Now comes The Chase National Bank of the City of New York, Trustee, the plaintiff in the above-entitled cause and the petitioner in the petition for appeal this day filed herein, by its solicitors, and respectfully represents that in the record and proceedings had in the above-entitled cause and 263 in the rendition of the order and final decree entered herein on the 15th day of November, 1937, there is manifest error for which said order and decree should be reversed.

As cause for reversal of said order and final decree and in connection with its petition for appeal herein, the plaintiff, The Chase National Bank of the City of New York, Trustee, makes the following assignment of errors, to wit:

(1) The Court erred in its order entered herein on July 26, 1937, in sustaining the defense separately pleaded in subdivision 19, as amended, of the separate and several answer and counterclaim of defendants, the City of Indianapolis and the directors and trustees of its utility district, that this Court has no jurisdiction of this action.

(2) The Court erred, in its said order entered herein on July 26, 1937 sustaining the defense that this Court has no jurisdiction of this action, in ordering and decreeing that plaintiff's bill of complaint herein be dismissed for want of jurisdiction of this action.

(3) The Court erred, in its said order entered herein on July 26, 1937 sustaining the defense that this Court has no jurisdiction of this action, in holding that defendant, The Indianapolis Gas Company, is an indispensable party to the relief sought by plaintiff in its bill of complaint.

(4) The Court erred, in its said order entered herein on July 26, 1937 sustaining the defense that this Court has no jurisdiction of this action, in holding that there is no collision between the interests of the plaintiff and the interests of 264 defendant, The Indianapolis Gas Company, in the controversies presented by plaintiff's bill of complaint.

(5) The Court erred, in its said order entered herein on July 26, 1937 sustaining the defense that this Court has no

jurisdiction of this action, in holding that defendant, The Indianapolis Gas Company, should be realigned with the plaintiff as a party plaintiff for the purpose of testing the jurisdiction of this Court to hear and determine the controversies presented by plaintiff's bill of complaint.

(6) The Court erred, in its said order entered herein on July 26, 1937 sustaining the defense that this Court has no jurisdiction of this action, in holding that there is not complete diversity of citizenship between plaintiff and each and all of the defendants herein if properly realigned with respect to the issues presented by plaintiff's bill of complaint, and that this Court therefore has no jurisdiction to hear and determine the controversies presented by said bill of complaint.

(7) The Court erred, in its order and final decree entered herein on November 15, 1937, in sustaining the defense separately pleaded in subdivision 19, as amended, of the separate and several answer and counterclaim of defendants, the City of Indianapolis and the directors and trustees of its utility district, and also pleaded in paragraph 6 of the same defendants' answer to the amendment and supplement to the bill of complaint, that this Court has no jurisdiction of this action.

(8) The Court erred, in its said order and final decree entered herein on November 15, 1937, in ordering and decree-
265 ing that plaintiff's bill of complaint herein, as amended and supplemented, be dismissed for want of jurisdiction of this action.

(9) The Court erred, in its said order and final decree entered herein on November 15, 1937, in holding that defendant, The Indianapolis Gas Company, is an indispensable party to the relief sought by plaintiff in this cause in its bill of complaint, as amended and supplemented.

(10) The Court erred, in its said order and final decree entered herein on November 15, 1937, in holding that there is no collision between the interests of the plaintiff and the interests of defendant, The Indianapolis Gas Company, in the controversies presented by plaintiff's bill of complaint, as amended and supplemented.

(11) The Court erred, in its said order and final decree entered herein on November 15, 1937, in holding that defendant, The Indianapolis Gas Company, should be realigned with the plaintiff as a party plaintiff for the purpose of testing the jurisdiction of this Court to hear and determine the controversies presented by plaintiff's bill of complaint, as amended and supplemented.

(12) The Court erred, in its said order and final decree entered herein on November 15, 1937, in holding that there is not complete diversity of citizenship between plaintiff and each and all of the defendants herein if properly realigned with respect to the issues presented by plaintiff's bill of complaint, as amended and supplemented, and that this Court therefore has no jurisdiction to hear and determine the controversies presented by said bill of complaint, as amended and supplemented.

266 (13) The Court erred, in its said order and final decree entered herein on November 15, 1937, in entering judgment against plaintiff for the costs of this action.

Wherefore, plaintiff prays that said order and final decree entered herein on the 15th day of November, 1937, may be reversed, that this cause may be remanded to the District Court for trial and that plaintiff may be granted such other and further relief as the Court may deem just and proper.

Dated November 27, 1937.

William L. Taylor,

Newton D. Baker,

Howard F. Burns,

Solicitors for plaintiff.

267 (Entry for November 27, 1937, continued.)

Entered No
27, 1937.

Upon the petition for appeal of the plaintiff, The Chase National Bank of the City of New York, Trustee, accompanied by its assignment of errors,

It Is Ordered that an appeal to the United States Circuit Court of appeals for the Seventh Circuit from the order and final decree of this Court entered herein on the 15th day of November, 1937, be and the same hereby is allowed, that citation issue as provided by law, that a transcript of the record, proceedings, papers and exhibits upon which said order and final decree was made, duly authenticated, be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit under the rules of said Court, and that the bond which plaintiff shall give upon said appeal be and it hereby is fixed at the sum of Five Hundred Dollars (\$500.00).

And the plaintiff also files appeal bond in the sum of \$500.00 with American Surety Company as surety thereon, which bond is approved by the Court, and is as follows:

268 IN THE DISTRICT COURT OF THE UNITED STATES.
 * * (Caption—1844) * *

BOND ON APPEAL.

Know All Men By These Presents that we, The Chase National Bank of the City of New York, Trustee, as principal, and American Surety Co. of New York, as surety, are held and firmly bound unto Citizens Gas Company of Indianapolis, a corporation, The City of Indianapolis, a municipal corporation, The Indianapolis Gas Company, a corporation, 269 William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris, and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Joseph H. McDuffee, Roy Sahn, Donald J. Angus, Isaac E. Woodard, and Leroy J. Keach, as members of the Board of Directors for Utilities of the City of Indianapolis; (hereinafter referred to as the "obligees") in the aggregate amount of Five Hundred 00/100 Dollars (\$500.00/100), to be paid to said obligees, their attorneys, executors, administrators, successors or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 27 day of November in the year of our Lord One Thousand Nine Hundred and Thirty-seven.

Whereas, lately, at a regular term of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, in a suit pending in said Court between The Chase National Bank of the City of New York, Trustee, as plaintiff, and Citizens Gas Company of Indianapolis, The City of Indianapolis, The Indianapolis Gas Company, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris, and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Joseph H. McDuffee, Roy Sahn, Donald J. Angus, Isaac E. Woodard, and Leroy J. Keach, as members of the Board of Directors for Utilities of the City of Indianapolis; as defendants, an order and final decree was made and entered against said plaintiff, hereinbefore referred to as the principal, and said plaintiff petitioned

for and obtained an appeal to reverse said order and final decree in the aforesaid suit, and a citation has been issued directed to said obligees, citing and admonishing them to be and appear at a session of the United States Circuit of Appeals for the Seventh Circuit to be held in the City of Chicago, State of Illinois, in said Circuit, on the 24 day of December, 1937:

Now, the condition of the above obligation is such that if said plaintiff, hereinbefore designated as principal, shall prosecute its appeal to effect and answer all costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

The Chase National Bank of the City of
New York, Trustee.

By Howard F. Burns,

Atty. in Fact,

Principal.

American Surety Company of N. Y.,

Richard L. Thorpe,

Atty. in Fact,

Surety.

(Seal)

Sealed and delivered in the
presence of:

William L. Taylor.

Approved:

Robert C. Baltzell,

*Judge of the District Court of the
United States for the Southern
District of Indiana, Indianapolis
Division.*

275 (Entry for November 27, 1937, Continued)

And the plaintiff also files praecipec for transcript of record, which praecipec is as follows:

Filed Nov. 27,
1937.

276 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

PLAINTIFF'S PRAECIPEC FOR TRANSCRIPT OF RECORD.

To the Clerk:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to an appeal allowed the plaintiff in the above-entitled cause, and to include in such transcript of record the following, and no other papers or exhibits, to wit:

1. The bill of complaint filed June 8, 1936, and all exhibits attached thereto, being Exhibits A to G, inclusive.
- 277 2. The separate answer of defendant, The Indianapolis Gas Company, filed October 1, 1936.
3. The separate and several answer and counter-claim of defendants, the City of Indianapolis and the directors and trustees of its Utility District, filed October 1, 1936, and all exhibits attached thereto, being Exhibits A to E, inclusive.
4. The amendment to said separate and several answer and counter-claim of defendants, the City of Indianapolis and others, filed October 22, 1936.
5. Plaintiff's answer to the counter-claim of defendants, the City of Indianapolis and the directors and trustees of its Utility District, filed November 14, 1936.
6. The separate and several reply of defendant, The Indianapolis Gas Company, to the counter-claim of its co-defendants, the City of Indianapolis and the directors and trustees of its Utility District, filed November 17, 1936.
7. The separate answer and counter-claim of defendant, Citizens Gas Company of Indianapolis, filed November 30, 1936.
8. The separate reply of defendant, Citizens Gas Company of Indianapolis, to the counter-claim of its co-defendants, the

City of Indianapolis and the directors and trustees of its Utility District, filed November 30, 1936.

9. The separate reply of defendants, the City of Indianapolis and the directors and trustees of its Utility District, 278 to the counter-claim of defendant, Citizens Gas Company of Indianapolis, filed December 22, 1936.

10. Plaintiff's answer to the counter-claim of defendant, Citizens Gas Company of Indianapolis, filed January 6, 1937.

11. The separate answer of defendant, The Indianapolis Gas Company, to the counter-claim of defendant, Citizens Gas Company of Indianapolis, filed January 16, 1937.

12. The request of defendants, the City of Indianapolis and the directors and trustees of its Utility District, for the separate determination of the question of the jurisdiction of this Court over the subject matter of this action, filed January 26, 1937.

13. The order of this Court entered on July 26, 1937, sustaining the defense that this Court has no jurisdiction of this action.

14. The order of this Court entered on August 18, 1937, permitting plaintiff to file an amendment and supplement to its bill of complaint.

15. The amendment and supplement to plaintiff's bill of complaint, filed August 18, 1937, with the following exception:

In place of "Exhibit H" attached to the amendment and supplement to plaintiff's bill of complaint, substitute the following:

"(Here is copied as 'Exhibit H' the contract of March 2, 1936, between the Department of Utilities of the City of Indianapolis and The Indianapolis Gas Company, which 279 contract is in the form of a letter dated March 2, 1936, from the Department of Utilities of the City of Indianapolis to The Indianapolis Gas Company. In all respects this is the identical contract printed as 'Exhibit E.' to the separate and several answer and counter claim of defendant, The City of Indianapolis and the directors and trustees of its Utility District.)"

16. Waiver of summons and entry of appearance by defendants filed August 18, 1937.

17. The separate answer of defendant, The Indianapolis Gas Company, to plaintiff's bill of complaint, as amended and supplemented, filed September 10, 1937.

18. The separate answer of defendants, the City of Indianapolis and the directors and trustees of its Utility District, to the amendment and supplement to plaintiff's bill of complaint, filed September 10, 1937.

19. The order of this Court entered on September 15, 1937, substituting new parties defendant.

20. The separate answer of defendant, Citizens Gas Company of Indianapolis, to the amendment and supplement to plaintiff's bill of complaint, filed September 21, 1937.

21. The order and final decree of this Court entered on November 15, 1937, sustaining the defense that this Court has no jurisdiction to hear and determine the controversies presented by plaintiff's bill of complaint, as amended and supplemented.

22. Plaintiff's petition for appeal.

280 22. The assignment of errors on behalf of plaintiff.

23. Order of this Court allowing appeal.

24. The bond on plaintiff's appeal.

25. The citation on plaintiff's appeal.

26. This praecipe.

27. The Clerk's certificate authenticating the transcript of record on appeal.

Said transcript of record to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, at Chicago, Illinois, on or before the 24 day of December, 1937.

Dated November 27, 1937.

William S. Taylor,

Newton D. Baker,

Howard F. Burns,

Solicitors for the Plaintiff.

281 **ACKNOWLEDGMENT OF SERVICE.**

Service of the above praecipe is hereby accepted and acknowledged this 27th day of November, 1937.

Citizens Gas Company of Indianapolis,
By Davis, Pantzer, Baltzell & Sparks,
Its Solicitors.

The Indianapolis Gas Company,
By Louis B. Ewbank,
William R. Higgins,
Its Solicitors.

The City of Indianapolis,
William J. Mooney, Sr.,
A. Dallas Hitz,
Alfred M. Glossbrenner,
Edward W. Harris and
Charles S. Rauh,
*as members of the Board of Trustees
for Utilities of the City of Indian-
apolis,*

Henry L. Dithmer,
Broadhurst Elsey,
Joseph H. McDuffee,
Roy Sahn,
Donald J. Angus,
Isaac E. Woodard, and
Leroy J. Keach,
*as members of the Board of Directors
for Utilities of the City of Indian-
apolis,*

By Floyd J. Mattice,
Corporation Counsel,
W. H. Thompson,
Albert Rabb,
Solicitors.

282 United States of America, }
Southern District of Indiana, } ss:
Indianapolis Division. }

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the above and foregoing is a true and full transcript of the record and proceedings in the cause of The Chase National Bank of the City of New York, Trustee, *vs.* Citizens

Gas Company of Indianapolis, *et al.*, No. 1844 in Equity, according to the praecipe filed November 27, 1937, now remaining among the records of said Court in my office.

I further certify that the original Citation has been incorporated into said transcript.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court of Indianapolis this 3rd day of December, 1937.

(Seal) Albert C. Sogemeier,
*Clerk, United States District Court,
Southern District of Indiana.*

271 (Entry for November 27, 1937, Continued)

And the plaintiff also files citation on appeal, duly acknowledged, which citation is as follows:

272 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—1844) * *

CITATION ON APPEAL.

To Citizens Gas Company of Indianapolis, The City of Indianapolis, The Indianapolis Gas Company, William J. Mooney, Sr., A. Dallas Hitz, Alfred M. Glossbrenner, Edward W. Harris, and Charles S. Rauh, as members of the Board of Trustees for Utilities of the City of Indianapolis, Henry L. Dithmer, Broadhurst Elsey, Joseph H. McDuffee, Roy Sahn, Donald J. Angus, Isaac E. Woodard, and Leroy J. Keach, as members of the Board of Directors for Utilities of the City of Indianapolis, defendants, Greeting:

You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit
273 Court of Appeals for the Seventh Circuit to be held in the City of Chicago, State of Illinois, in said Circuit, on the 24 day of December, 1937, pursuant to an order allowing an appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, wherein The Chase National Bank of the City of New York, Trustee, is appellant and you are appellees, to show cause, if any there be, why the order and final decree made and entered against said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert C. Baltzell, Judge of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, this 27 day of November, in the year of our Lord One Thousand Nine Hundred and Thirty-seven and of the Independence of the United States of America the One Hundred Sixty-second.

Robert C. Baltzell,
*Judge of the District Court of the United
States for the Southern District of In-
diana, Indianapolis Division.*

Service of the above citation is hereby acknowledged and the appearance of the appellees and each of them is hereby entered.

Citizens Gas Company of Indianapolis,
By Davis, Pantzer, Baltzell & Sparks,
Its Solicitors.

The Indianapolis Gas Company,
By Louis B. Ewbank,
William R. Higgins,
Its Solicitors.

The City of Indianapolis,
William J. Mooney, Sr.,
A. Dallas Hitz,
Alfred M. Glossbrenner,
Edward W. Harris and
Charles S. Rauh,
*as members of the Board of Trustees
for Utilities of the City of Indian-
apolis.*

Henry L. Dithmer,
Broadhurst Elsey,
Joseph H. McDuffee,
Roy Sahn,
Donald J. Angus,
Isaac E. Woodard, and
Leroy J. Keach,
*as members of the Board of Directors
for Utilities of the City of Indian-
apolis.*

By Floyd J. Mattice,
Corporation Counsel,
W. H. Thompson,
Albert Rabb,
Solicitors.

Dated 27 November, 1937.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 283, inclusive, contain a true copy of Volume I of the printed record, printed under my supervision and filed on the twentieth day of December, 1939, which together with Volumes II and III of the printed record, constitutes the record, upon which the following entitled causes were heard and determined:

The Chase National Bank of the City of New York,
Trustee, etc.,
Plaintiff-appellant,

7143

vs.

Citizens Gas Company of Indianapolis, et al.,
Defendants-Appellees.

The Chase National Bank of the City of New York,
Trustee, etc.,
Plaintiff-appellee,

7144

vs.

The Indianapolis Gas Company,
Defendant-appellant.

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 28th day of August, A. D. 1940.

(Seal) Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*